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Title 3—

The President

Executive Order 13594 of December 19, 2011

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (Public Law 111–322), which freezes certain pay schedules for civilian Federal employees at 2010 levels through 2012 and provides for the phase-in of the full applicable locality pay rates in non-foreign areas pursuant to the Non-Foreign Area Retirement Equity Assurance Act of 2009 (5 U.S.C. 5304 note), it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* Pursuant to the Continuing Appropriations and Surface Transportation Extensions Act, 2011(Public Law 111–322; December 22, 2010), the rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)) are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a), and section 140 of Public Law 97–92) at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to section 5304 of title 5, United States Code, the Non-Foreign Area Retirement Equity Assurance Act of 2009 (5 U.S.C. 5304 note), and the Continuing Appropriations and Surface Transportation Extensions Act, 2011(Public Law 111–322; December 22, 2010), locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the *Federal Register*.

Sec. 6. *Administrative Law Judges.* Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2012. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2012.

Sec. 8. *Prior Order Superseded.* Executive Order 13561 of December 22, 2010, is superseded.

THE WHITE HOUSE,

December 19, 2011.

Billing code 3295–F2–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2012)

	1	2	3	4	5	6	7	8	9	10
GS-1	$17,803	$18,398	$18,990	$19,579	$20,171	$20,519	$21,104	$21,694	$21,717	$22,269
GS-2	20,017	20,493	21,155	21,717	21,961	22,607	23,253	23,899	24,545	25,191
GS-3	21,840	22,568	23,296	24,024	24,752	25,480	26,208	26,936	27,664	28,392
GS-4	24,518	25,335	26,152	26,969	27,786	28,603	29,420	30,237	31,054	31,871
GS-5	27,431	28,345	29,259	30,173	31,087	32,001	32,915	33,829	34,743	35,657
GS-6	30,577	31,596	32,615	33,634	34,653	35,672	36,691	37,710	38,729	39,748
GS-7	33,979	35,112	36,245	37,378	38,511	39,644	40,777	41,910	43,043	44,176
GS-8	37,631	38,885	40,139	41,393	42,647	43,901	45,155	46,409	47,663	48,917
GS-9	41,563	42,948	44,333	45,718	47,103	48,488	49,873	51,258	52,643	54,028
GS-10	45,771	47,297	48,823	50,349	51,875	53,401	54,927	56,453	57,979	59,505
GS-11	50,287	51,963	53,639	55,315	56,991	58,667	60,343	62,019	63,695	65,371
GS-12	60,274	62,283	64,292	66,301	68,310	70,319	72,328	74,337	76,346	78,355
GS-13	71,674	74,063	76,452	78,841	81,230	83,619	86,008	88,397	90,786	93,175
GS-14	84,697	87,520	90,343	93,166	95,989	98,812	101,635	104,458	107,281	110,104
GS-15	99,628	102,949	106,270	109,591	112,912	116,233	119,554	122,875	126,196	129,517

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

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2	102,617	83,150	67,375	54,593	44,236	39,546	35,354	31,605	28,254
3	105,695	85,644	69,397	56,231	45,564	40,732	36,414	32,553	29,102
4	108,866	88,214	71,479	57,918	46,930	41,954	37,507	33,529	29,975
5	112,132	90,860	73,623	59,655	48,338	43,213	38,632	34,535	30,874
6	115,496	93,586	75,832	61,445	49,789	44,509	39,791	35,571	31,800
7	118,961	96,393	78,107	63,288	51,282	45,844	40,985	36,638	32,754
8	122,530	99,285	80,450	65,187	52,821	47,220	42,214	37,737	33,737
9	126,206	102,264	82,863	67,143	54,405	48,636	43,481	38,870	34,749
10	129,517	105,332	85,349	69,157	56,037	50,095	44,785	40,036	35,791
11	129,517	108,492	87,910	71,232	57,719	51,598	46,129	41,237	36,865
12	129,517	111,746	90,547	73,369	59,450	53,146	47,512	42,474	37,971
13	129,517	115,099	93,263	75,570	61,234	54,741	48,938	43,748	39,110
14	129,517	118,552	96,061	77,837	63,071	56,383	50,406	45,060	40,283

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2012)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Assistant Under Secretaries for Health $157,279**
(Only applies to incumbents who are not physicians or dentists)

	Minimum	Maximum
Service Directors	$116,844	$145,113
Director, National Center for Preventive Health	99,628	145,113

Physician and Dentist Base and Longevity Schedule***

Physician Grade	$97,987	$143,725
Dentist Grade	97,987	143,725

Clinical Podiatrist, Chiropractor, and Optometrist Schedule

Chief Grade	$99,628	$129,517
Senior Grade	84,697	110,104
Intermediate Grade	71,674	93,175
Full Grade	60,274	78,355
Associate Grade	50,287	65,371

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$99,628	$129,517
Assistant Director Grade	84,697	110,104
Chief Grade	71,674	93,175
Senior Grade	60,274	78,355
Intermediate Grade	50,287	65,371
Full Grade	41,563	54,028
Associate Grade	35,766	46,494
Junior Grade	30,577	39,748

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* This schedule does not apply to the Deputy Under Secretary for Health, the Associate Deputy Under Secretary for Health, Assistant Under Secretaries for Health who are physicians or dentists, Medical Directors, the Assistant Under Secretary for Nursing Programs, or the Director of Nursing Services.

** Pursuant to 38 U.S.C. 7404(d), the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $145,700.

*** Pursuant to section 3 of Public Law 108-445 and 38 U.S.C. 7431, Veterans Health Administration physicians and dentists may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2012)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$119,554	$179,700
Agencies without a Certified SES Performance Appraisal System	$119,554	$165,300

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2012)

Level I	$199,700
Level II	179,700
Level III	165,300
Level IV	155,500
Level V	145,700

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2012)

Vice President	$230,700
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2012)

Chief Justice of the United States	$223,500
Associate Justices of the Supreme Court	213,900
Circuit Judges	184,500
District Judges	174,000
Judges of the Court of International Trade	174,000

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES
(Effective January 1, 2012)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
COMMISSIONED OFFICERS											
O-10**	-	-	-	-	-	-	-	-	-	-	-
O-9	-	-	-	-	-	-	-	-	-	-	-
O-8	$9,683.10	$10,000.20	$10,210.80	$10,269.60	$10,532.40	$10,971.00	$11,073.30	$11,489.70	$11,609.10	$11,968.20	$12,487.80
O-7	8,045.70	8,419.80	8,592.60	8,730.00	8,979.00	9,225.00	9,509.40	9,792.90	10,077.30	10,971.00	11,725.50
O-6	5,963.40	6,551.70	6,981.30	6,981.30	7,008.00	7,308.60	7,348.20	7,348.20	7,765.80	8,504.10	8,937.60
O-5	4,971.30	5,600.40	5,988.00	6,061.20	6,303.00	6,447.60	6,765.90	6,999.30	7,301.10	7,763.10	7,982.40
O-4	4,289.40	4,965.60	5,296.80	5,370.60	5,678.10	6,007.80	6,418.50	6,738.30	6,960.60	7,088.10	7,161.90
O-3***	3,771.30	4,275.30	4,614.60	5,031.00	5,271.90	5,536.50	5,707.80	5,988.90	6,135.60	6,135.60	6,135.60
O-2***	3,258.60	3,711.30	4,274.40	4,418.70	4,509.60	4,509.60	4,509.60	4,509.60	4,509.60	4,509.60	4,509.60
O-1***	2,828.40	2,943.90	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	-	-	-	$5,031.00	$5,271.90	$5,536.50	$5,707.80	$5,988.90	$6,226.20	$6,362.40	$6,548.10
O-2E	-	-	-	4,418.70	4,509.60	4,653.30	4,895.70	5,082.90	5,222.40	5,222.40	5,222.40
O-1E	-	-	-	3,558.60	3,800.10	3,940.80	4,084.50	4,225.50	4,418.70	4,418.70	4,418.70
WARRANT OFFICERS											
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	$3,897.60	$4,192.50	$4,312.80	$4,431.30	$4,635.00	$4,836.90	$5,040.90	$5,348.70	$5,618.10	$5,874.30	$6,084.00
W-3	3,558.90	3,707.40	3,859.50	3,909.30	4,068.90	4,382.70	4,709.10	4,862.70	5,040.60	5,224.20	5,553.60
W-2	3,149.40	3,447.30	3,539.10	3,602.10	3,806.40	4,123.80	4,281.00	4,436.10	4,625.40	4,773.30	4,907.40
W-1	2,764.50	3,061.80	3,141.90	3,311.10	3,511.20	3,805.80	3,943.50	4,135.50	4,324.80	4,473.60	4,610.70

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month for officers at pay grades O-7 through O-10, and limited to the rate of basic pay for level V of the Executive Schedule, which is $12,141.60 per month, for officers at O-6 and below.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $20,587.80 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 2)
(Effective January 1, 2012)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
COMMISSIONED OFFICERS											
O-10**	$15,647.10*	$15,723.30*	$16,050.60*	$16,620.00*	$16,620.00*	$17,451.00*	$17,451.00*	$18,323.40*	$18,323.40*	$19,239.90*	$19,239.90*
O-9	13,685.10	13,882.50	14,167.20	14,664.00	14,664.00	15,397.50*	15,397.50*	16,167.60*	16,167.60*	16,975.80*	16,975.80*
O-8	12,966.60	13,286.40	13,286.40	13,286.40	13,286.40	13,618.80	13,618.80	13,959.30	13,959.30	13,959.30	13,959.30
O-7	11,725.50	11,725.50	11,725.50	11,785.20	11,785.20	12,021.00	12,021.00	12,021.00	12,021.00	12,021.00	12,021.00
O-6	9,370.50	9,617.10	9,866.70	10,350.60	10,350.60	10,557.30	10,557.30	10,557.30	10,557.30	10,557.30	10,557.30
O-5	8,199.30	8,446.20	8,446.20	8,446.20	8,446.20	8,446.20	8,446.20	8,446.20	8,446.20	8,446.20	8,446.20
O-4	7,161.90	7,161.90	7,161.90	7,161.90	7,161.90	7,161.90	7,161.90	7,161.90	7,161.90	7,161.90	7,161.90
O-3***	6,135.60	6,135.60	6,135.60	6,135.60	6,135.60	6,135.60	6,135.60	6,135.60	6,135.60	6,135.60	6,135.60
O-2***	4,509.60	4,509.60	4,509.60	4,509.60	4,509.60	4,509.60	4,509.60	4,509.60	4,509.60	4,509.60	4,509.60
O-1***	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60	3,558.60
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	$6,548.10	$6,548.10	$6,548.10	$6,548.10	$6,548.10	$6,548.10	$6,548.10	$6,548.10	$6,548.10	$6,548.10	$6,548.10
O-2E	5,222.40	5,222.40	5,222.40	5,222.40	5,222.40	5,222.40	5,222.40	5,222.40	5,222.40	5,222.40	5,222.40
O-1E	4,418.70	4,418.70	4,418.70	4,418.70	4,418.70	4,418.70	4,418.70	4,418.70	4,418.70	4,418.70	4,418.70
WARRANT OFFICERS											
W-5	$6,930.00	$7,281.60	$7,543.50	$7,833.30	$7,833.30	$8,225.40	$8,225.40	$8,636.40	$8,636.40	$9,068.70	$9,068.70
W-4	6,288.60	6,589.20	6,836.10	7,117.80	7,117.80	7,260.00	7,260.00	7,260.00	7,260.00	7,260.00	7,260.00
W-3	5,776.20	5,909.40	6,051.00	6,243.30	6,243.30	6,243.30	6,243.30	6,243.30	6,243.30	6,243.30	6,243.30
W-2	5,067.60	5,173.20	5,256.90	5,256.90	5,256.90	5,256.90	5,256.90	5,256.90	5,256.90	5,256.90	5,256.90
W-1	4,776.90	4,776.90	4,776.90	4,776.90	4,776.90	4,776.90	4,776.90	4,776.90	4,776.90	4,776.90	4,776.90

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month for officers at pay grades O-7 through O-10, and limited to the rate of basic pay for level V of the Executive Schedule, which is $12,141.60 per month, for officers at O-6 and below.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $20,587.80 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 3)
(Effective January 1, 2012)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
ENLISTED MEMBERS											
E-9*	-	-	-	-	-	-	$4,708.80	$4,815.60	$4,950.00	$5,108.10	$5,267.70
E-8	-	-	-	-	-	$3,854.70	4,025.10	4,130.70	4,257.30	4,394.40	4,641.60
E-7	$2,679.60	$2,924.70	$3,036.60	$3,185.10	$3,300.90	3,499.80	3,611.70	3,810.90	3,976.20	4,089.00	4,209.30
E-6	2,317.80	2,550.30	2,662.80	2,772.30	2,886.30	3,143.10	3,243.30	3,436.80	3,496.20	3,539.40	3,589.80
E-5	2,123.40	2,265.90	2,375.40	2,487.60	2,662.20	2,845.20	2,994.60	3,012.90	3,012.90	3,012.90	3,012.90
E-4	1,946.70	2,046.30	2,157.30	2,266.50	2,363.10	2,363.10	2,363.10	2,363.10	2,363.10	2,363.10	2,363.10
E-3	1,757.40	1,868.10	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20
E-2	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30
E-1**	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00
E-1***	1,378.80	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,609.50 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 4)
(Effective January 1, 2012)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
						ENLISTED MEMBERS					
E-9*	$5,523.60	$5,739.60	$5,967.30	$6,315.30	$6,315.30	$6,630.60	$6,630.60	$6,962.40	$6,962.40	$7,311.00	$7,311.00
E-8	4,766.70	4,980.00	5,098.20	5,389.50	5,389.50	5,497.80	5,497.80	5,497.80	5,497.80	5,497.80	5,497.80
E-7	4,256.10	4,412.40	4,496.40	4,815.90	4,815.90	4,815.90	4,815.90	4,815.90	4,815.90	4,815.90	4,815.90
E-6	3,589.80	3,589.80	3,589.80	3,589.80	3,589.80	3,589.80	3,589.80	3,589.80	3,589.80	3,589.80	3,589.80
E-5	3,012.90	3,012.90	3,012.90	3,012.90	3,012.90	3,012.90	3,012.90	3,012.90	3,012.90	3,012.90	3,012.90
E-4	2,363.10	2,363.10	2,363.10	2,363.10	2,363.10	2,363.10	2,363.10	2,363.10	2,363.10	2,363.10	2,363.10
E-3	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20	1,981.20
E-2	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30	1,671.30
E-1**	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00	1,491.00
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,609.50 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 5)

Part II-RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $990.00.

Note: As a result of the enactment of sections 602-604 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2012)

Locality Pay Area*	Rate
Alaska**	24.69%
Atlanta-Sandy Springs-Gainesville, GA-AL	19.29%
Boston-Worcester-Manchester, MA-NH-RI-ME	24.80%
Buffalo-Niagara-Cattaraugus, NY	16.98%
Chicago-Naperville-Michigan City, IL-IN-WI	25.10%
Cincinnati-Middletown-Wilmington, OH-KY-IN	18.55%
Cleveland-Akron-Elyria, OH	18.68%
Columbus-Marion-Chillicothe, OH	17.16%
Dallas-Fort Worth, TX	20.67%
Dayton-Springfield-Greenville, OH	16.24%
Denver-Aurora-Boulder, CO	22.52%
Detroit-Warren-Flint, MI	24.09%
Hartford-West Hartford-Willimantic, CT-MA	25.82%
Hawaii**	16.51%
Houston-Baytown-Huntsville, TX	28.71%
Huntsville-Decatur, AL	16.02%
Indianapolis-Anderson-Columbus, IN	14.68%
Los Angeles-Long Beach-Riverside, CA	27.16%
Miami-Fort Lauderdale-Pompano Beach, FL	20.79%
Milwaukee-Racine-Waukesha, WI	18.10%
Minneapolis-St. Paul-St. Cloud, MN-WI	20.96%
New York-Newark-Bridgeport, NY-NJ-CT-PA	28.72%
Philadelphia-Camden-Vineland, PA-NJ-DE-MD	21.79%
Phoenix-Mesa-Scottsdale, AZ	16.76%
Pittsburgh-New Castle, PA	16.37%
Portland-Vancouver-Beaverton, OR-WA	20.35%
Raleigh-Durham-Cary, NC	17.64%
Richmond, VA	16.47%
Sacramento—Arden-Arcade—Yuba City, CA-NV	22.20%
San Diego-Carlsbad-San Marcos, CA	24.19%
San Jose-San Francisco-Oakland, CA	35.15%
Seattle-Tacoma-Olympia, WA	21.81%
Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA	24.22%
Rest of U.S**	14.16%

* Locality Pay Areas are defined in 5 CFR 531.603.

** Under the Non-Foreign Area Retirement Equity Assurance Act of 2009 (sections 1911-1919, Public Law 111-84, October 28, 2009), the full amount of the applicable locality pay rate approved by the President applies in non-foreign areas effective with the first pay period beginning in January 2012. Alaska and Hawaii have separate locality pay rates as shown above. Other non-foreign areas (as identified in 5 CFR 591.205(b)(3)-(16)) are part of the Rest of U.S. locality pay area.

SCHEDULE 10-ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2012)

AL-3/A	$103,900
AL-3/B	111,800
AL-3/C	119,900
AL-3/D	127,800
AL-3/E	135,900
AL-3/F	143,700
AL-2	151,800
AL-1	155,500

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Billing code 6235–01–C

Presidential Documents

Executive Order 13595 of December 19, 2011

Instituting a National Action Plan On Women, Peace, And Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* (a) The United States recognizes that promoting women's participation in conflict prevention, management, and resolution, as well as in post-conflict relief and recovery, advances peace, national security, economic and social development, and international cooperation.

(b) The United States recognizes the responsibility of all nations to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, including when implemented by means of sexual violence. The United States further recognizes that sexual violence, when used or commissioned as a tactic of war or as a part of a widespread or systematic attack against civilians, can exacerbate and prolong armed conflict and impede the restoration of peace and security.

(c) It shall be the policy and practice of the executive branch of the United States to have a National Action Plan on Women, Peace, and Security (National Action Plan).

Sec. 2. *National Action Plan.* A National Action Plan shall be created pursuant to the process outlined in Presidential Policy Directive 1 and shall identify and develop activities and initiatives in the following areas:

(a) *National integration and institutionalization.* Through interagency coordination, policy development, enhanced professional training and education, and evaluation, the United States Government will institutionalize a gender-responsive approach to its diplomatic, development, and defense-related work in conflict-affected environments.

(b) *Participation in peace processes and decisionmaking.* The United States Government will improve the prospects for inclusive, just, and sustainable peace by promoting and strengthening women's rights and effective leadership and substantive participation in peace processes, conflict prevention, peacebuilding, transitional processes, and decisionmaking institutions in conflict-affected environments.

(c) *Protection from violence.* The United States Government will strengthen its efforts to prevent—and protect women and children from—harm, exploitation, discrimination, and abuse, including sexual and gender-based violence and trafficking in persons, and to hold perpetrators accountable in conflict-affected environments.

(d) *Conflict prevention.* The United States Government will promote women's roles in conflict prevention, improve conflict early-warning and response systems through the integration of gender perspectives, and invest in women and girls' health, education, and economic opportunity to create conditions for stable societies and lasting peace.

(e) *Access to relief and recovery.* The United States Government will respond to the distinct needs of women and children in conflict-affected disasters and crises, including by providing safe, equitable access to humanitarian assistance.

Sec. 3. *Responsibility of Executive Departments and Agencies.* (a) Executive departments and agencies (agencies) shall maintain a current awareness of U.S. policy with regard to Women, Peace, and Security, as set out in

the National Action Plan, as it is relevant to their functions, and shall perform such functions so as to respect and implement that policy fully, while retaining their established institutional roles in the implementation, interpretation, and enforcement of Federal law.

(b) The Secretary of State, the Secretary of Defense, and the Administrator of the United States Agency for International Development shall each:

(i) designate one or more officers, as appropriate, as responsible for coordinating and implementing the National Action Plan;

(ii) within 150 days of the date of the release of the National Action Plan, develop and submit to the Assistant to the President and National Security Advisor an agency-specific implementation plan that will identify the actions each agency plans to take to implement the National Action Plan; and

(iii) execute their agency-specific implementation plans, and monitor and report to the Assistant to the President and National Security Advisor on such execution.

Sec. 4. *Interagency Process.* The Assistant to the President and National Security Advisor shall, consistent with Presidential Policy Directive 1 or any successor documents, establish an interagency process for coordinating the implementation of this order, which shall, *inter alia*:

(a) coordinate implementation of the National Action Plan and agency-specific implementation plans as specified in section 3(b) of this order;

(b) establish a mechanism for agencies to report progress in implementing the National Action Plan and agency-specific implementation plans, as appropriate and as specified in section 3(b), and in meeting the objectives of this order, which the Assistant to the President and National Security Advisor shall draw upon to provide an annual report to the President;

(c) coordinate a comprehensive periodic review of, and update to, the National Action Plan. The review of, and update to, the National Action Plan will be informed by consultation with relevant civil society organizations. The first review will take place in 2015; and

(d) consider and implement other revisions to the National Action Plan, as necessary.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Independent agencies are strongly encouraged to comply with this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
December 19, 2011.

[FR Doc. 2011–33089
Filed 12–22–11; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 76, No. 247
Friday, December 23, 2011

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 920

[Doc. No. AMS–FV–11–0041; FV11–920–1 FR]

Kiwifruit Grown in California; Change in Reporting Requirements and New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the reporting requirements currently prescribed under the marketing order that regulates the handling of kiwifruit grown in California. The order is administered locally by the Kiwifruit Administrative Committee (Committee). This rule requires handlers to file two new end-of-season reports with the Committee. One report contains price and handler shipment information and the other report contains grower shipment information. The Committee uses this information to determine appropriate grower representation on the Committee, to conduct grower nominations, to verify shipments for assessment collections, and to prepare the annual report and the annual marketing policy, as required under the order.

DATES: *Effective Date:* December 24, 2011.

FOR FURTHER INFORMATION CONTACT: Kathie M. Notoro, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Kathie.Notoro@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule adds two new reporting requirements and two new forms to those currently specified in the order's administrative rules and regulations. These changes allow the Committee to collect annual, end-of-season price, shipment, and grower information (grower entity/farm name, mailing address, location of farm by county, shipments by pack style, and acreage) from all kiwifruit handlers. Under this regulation, both reports are due from each handler within 30 days after such handler has completed current season shipments. The Committee will use this information to determine appropriate grower representation on the Committee, to conduct grower nominations, to verify shipments for assessment collections, and to prepare the annual report and the annual marketing policy, as required under the order. This rule was unanimously recommended by the Committee at a meeting on March 17, 2011.

Section 920.12 of the order defines the Districts within the production area, and Section 920.20 provides, in part, that ''* * * district representation on the committee shall be based upon the previous five-year average production in the district and shall be established so as to provide an equitable relationship between membership and districts.''

Section 920.22 of the order defines the nomination procedures, allowing for nominations to be conducted via mail, and provides that growers are eligible to participate in nominations in the district they produce kiwifruit.

Section 920.34 of the order requires that the Committee prepare an annual report for presentation to the Secretary and the industry. The annual report provides a cumulative review of industry statistics as well as information about program activities and expenditures.

Section 920.41 of the order provides authority to assess each person who first handles kiwifruit a pro rata share of the expenses which are reasonable and likely to be incurred by the Committee during a fiscal period.

Section 920.50 of the order requires the Committee to prepare an annual marketing policy for submission to the Secretary. The marketing policy describes expected kiwifruit production, quality, and marketing conditions. Along with other pertinent information, the marketing policy provides the basis for the recommendation of appropriate kiwifruit handling regulations for the upcoming season.

Section 920.60 of the order authorizes the Committee to require handlers to file reports and provide other information as may be necessary for the Committee to perform these duties.

Section 920.61 (Compliance) of the order provides that all handlers must conform to the provisions and regulations set forth in the order, and the Committee is to verify handler compliance with order provisions.

The Committee's current reporting requirements are specified in § 920.160 of the order's administrative rules and regulations. This section currently requires that handlers submit: (1) A report of shipment and inventory data which provides monthly data regarding the reporting period, name and identification of the shipper, and the number of containers by type and weight by shipment destination category of all kiwifruit; (2) a Kiwifruit Inventory Shipping System (KISS) form, which consists of three sections: KISS/Add Inventory, KISS/Deduct Inventory, and KISS/Shipment and which provides beginning inventory by size and container type, quantity of the fruit lost in repack or repacked into other container types, total domestic and export shipments by size and container type; and any other adjustments which increase or decrease handler inventory; (3) a Return Receipt of Kiwifruit to Grower Form which reports fruit returned by a handler to a grower(s); and (4) a KISS Price/Shipment report which contains handler information, reporting period, total fresh market shipments, and gross f.o.b. sales of non-organic kiwifruit by pack style and size.

Since 1984, the California Kiwifruit Commission (Commission) has collected end-of-season price, shipment, and grower information (grower entity/farm name, mailing address, location of farm by county, shipments by pack style, and acreage), on organic and non-organic kiwifruit via two Commission forms. The Commission has, through an agreement, shared this information with the Committee. The Committee previously used the majority of this information to determine appropriate grower representation on the Committee, to conduct grower nominations, to verify shipments for assessment collections, and to prepare the annual report and the annual marketing policy under the order.

The Commission ceased to exist as of September 30, 2011. Thus, the Committee no longer has access to this previously shared information. As the current reporting requirements under the order make no provisions for collecting end-of-season information previously provided by the Commission, and as the Committee would need this information from all handlers, including organic handlers, the Committee unanimously recommended adding these new reporting requirements and two new forms, the End-of-Season F.O.B. Sales Report and the Final Packout Report, to § 920.160 of the order's administrative rules and regulations.

Under this final rule, § 920.160 is revised by adding two new reporting requirements and two new forms, due by each handler (organic and non-organic) within 30 days after such handler has completed current season shipments. Kiwifruit shipments generally begin in September and continue through July. The information collected on the End-of-Season F.O.B. Sales Report includes data on gross f.o.b. sales value and number of containers for fresh market shipments by fruit size and pack style for the season. The information collected on the Final Packout Report includes containers shipped by pack style for fresh market shipments, for each grower entity during the season. The report also includes the grower entity and farm name, mailing address, the county where the farm is located, and total acreage. Both reports also show the company name, contact person, and phone number of the handler. The information obtained from both of the two new reports provides data to determine appropriate representation on the Committee, to conduct grower nominations, to verify shipments for assessment collections, and to prepare the annual report and annual marketing policy.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This rule only changes the reporting requirements under the domestic handling regulations. No changes to the import regulations will be made.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on Committee data, there are approximately 27 handlers of kiwifruit subject to regulation under the marketing order and approximately 176 kiwifruit growers in the production area.

The California Agricultural Statistical Service (CASS) reported total California kiwifruit production for the 2010–11 season at 32,700 tons with an average price of $768 per ton. Based on the average price, shipment, and grower information provided by the CASS and the Committee, it could be concluded that the majority of kiwifruit handlers would be considered small businesses under the SBA definition. In addition, based on kiwifruit production and price information, as well as the total number of California kiwifruit growers, the average annual grower revenue is less than $750,000. Thus, the majority of California kiwifruit producers may also be classified as small entities.

This final rule changes the reporting requirements currently prescribed under the order. This rule revises § 920.160 by adding two new reporting requirements and two new forms, due by handlers within 30 days after such handler has completed current season shipments. The information collected on the End-of-Season F.O.B. Sales Report includes data on gross f.o.b. sales value and number of containers for fresh market shipments by fruit size and pack style for the season. The information collected on the Final Packout Report includes containers shipped by pack style for fresh market shipments, for each grower entity during the season. The report also includes the grower entity and farm name, mailing address, the county where the farm is located, and total acreage. Both reports also show the company name, contact person, and phone number of the handler. The information obtained from both of the two new reports provides data to determine appropriate grower representation on the Committee, to conduct grower nominations, to verify shipments for assessment collections, and to prepare the annual report and annual marketing policy. This final rule revises § 920.160, which specifies the reporting requirements.

Requiring the price, shipment, and grower information at the end of the season imposes a minor increase in the reporting burden on all kiwifruit handlers. As this data was previously provided to the Commission and shared with the Committee, these two annual end-of-season reports do not significantly increase the handlers'

record keeping burden because the primary source of data was already being recorded and maintained by handlers as a routine part of their daily business. The majority of handlers use computers to record their data, and this information can readily be accessed and summarized for these reports. Consequently, any additional costs associated with these changes are expected to be minimal. Also, the benefits of having consolidated end-of-season price, shipping, and grower data are expected to outweigh any costs associated with the increase in reporting burden. Further, the benefits of this rule are expected to be equally available to all industry members, regardless of their size. It is anticipated that the transmission of these reports from handlers to the Committee will be done by either email or facsimile (FAX) machines.

The Committee discussed alternatives to this action, including making no changes to the reporting requirements, but determined that in order to carry out the objectives of the marketing order, the information collected contained within these two new reports is necessary. Therefore, this alternative was rejected.

This final rule imposes additional reporting burdens on handlers of kiwifruit in California. This action requires two new Committee forms: The End-of-Season F.O.B. Sales Report and the Final Packout Report. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic OMB Fruit Crops. As a result of this action, two new Committee forms would be created. They have been submitted to OMB for review.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

Further, the Committee's meetings were widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the March 17, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on August 9, 2011 (76 FR 48742). Copies of the rule were mailed or sent via facsimile to all Committee members and kiwifruit handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending October 11, 2011, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee requires time to prepare and mail handler report packets, which should include the End-of-Season F.O.B. Sales Report and the Final Packout Report, prior to the beginning of shipments for the 2011–12 crop year. In addition, handlers are aware of this rule, which was recommended at a Committee meeting on March 17, 2011. Also, a 60-day comment period was provided in the proposed rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 920.160 is amended by adding paragraphs (f) and (g) to read as follows:

§ 920.160 Reports.

* * * * *

(f) Each handler shall file annually with the Committee an End-of-Season F.O.B. Sales Report, due within 30 days after such handler has completed current season shipments, reporting gross f.o.b. sales value and number of containers by pack style and size for fresh market shipments for the season. The report shall also show the company name, contact person, and phone number of the handler.

(g) Each handler shall file annually with the Committee a Final Packout Report, due within 30 days after such handler has completed current season shipments, reporting total containers shipped, by pack style for fresh market shipments, for each grower entity during the season. The report shall also include the grower entity and farm name, mailing address, the county in which the farm is located, and total acreage for each reported grower entity. Also, the report shall show the company name, contact person, and phone number of the handler.

Dated: December 14, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–32928 Filed 12–22–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS–FV–11–0051; FV11–948–1 FR]

Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 3

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the size requirements for potatoes under the Colorado potato marketing order (order). The order regulates the handling of Irish potatoes grown in Colorado, and is administered locally by the Colorado

Potato Administrative Committee for Area No. 3 (Committee). This rule modifies the size requirements for handling small potatoes that measure under 1⅞ inches in diameter. This rule allows the handling of two size ranges: ¾ inch minimum diameter to 1⅞ inches maximum diameter and Size B (1½ to 2¼ inches), if such potatoes otherwise meet the requirements of the U.S. No. 1 grade. The revisions will promote orderly marketing by ensuring that only potatoes of certain similar size profiles are packed and shipped in the same container. This rule is expected to benefit the producers, handlers, and consumers of Colorado potatoes.

DATES: *Effective Date:* December 24, 2011.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted there from. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the size requirements for small U.S. No. 1 grade potatoes handled under the Colorado Area 3 handling regulations. The rule modifies the size requirements to establish allowable size ranges for potatoes that measure less than 1⅞ inches. This rule allows potatoes that measure ¾ inch minimum diameter to 1⅞ inches maximum diameter to be handled if such potatoes otherwise meet the requirements of the U.S. No. 1 grade. In addition, U.S. No. 1 grade Size B potatoes (1½ inches minimum diameter to 2¼ inches maximum diameter) are also allowed to be handled. The size requirements for U.S. No. 2 and better grade potatoes that are 1⅞ inches minimum diameter and larger are not affected by this change. The rule was unanimously recommended by the Committee at a meeting on May 12, 2011. The changes are expected to enhance orderly marketing conditions and increase returns for producers and handlers.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of requirements issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service and certified as meeting the applicable requirements of such regulations.

Under the order, the State of Colorado is divided into three separate regulatory areas for marketing order purposes. Area No. 1, commonly known as the Western Slope, includes and consists of the counties of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata, and all counties west thereof; Area No. 2, commonly known as the San Luis Valley, includes and consists of the counties of Saguache, Huerfano, Las Animas, Mineral, Archuleta, and all counties south thereof; and Area No. 3 includes and consists of all the remaining counties in the State of Colorado which are not included in Area No. 1 or Area No. 2. The order currently regulates the handling of potatoes grown in Areas No. 2 and No. 3 only; regulation for Area No. 1 is currently not active.

Grade, size, and maturity regulations specific to the handling of Colorado potatoes grown in Area No. 3 are contained in § 948.387 of the order's administrative rules and regulations. Prior to this action, § 948.387(a) required that all varieties of potatoes handled under the order be U.S. No. 2 or better grade and 1⅞ inches minimum diameter or 4 ounces minimum weight, except that potatoes that meet the requirements of the U.S. No. 1 grade may be ¾ inch minimum diameter.

The Committee met on May 12, 2011, to discuss revising the size requirements in the handling regulations. As a result of the deliberations, the Committee unanimously recommended modifying the size requirements for potatoes that meet U.S. No. 1 grade. Specifically, the Committee recommended establishing allowable size ranges for small size (under 1⅞ inches in diameter) U.S. No. 1 grade and better potatoes. With this final rule, two allowable size ranges, ¾ inch minimum diameter to 1⅞ inches maximum diameter and Size B (1½ inches minimum diameter to 2¼ inches maximum diameter), are established for potatoes that otherwise meet or exceed the minimum requirements of the U.S. No. 1 grade standard. The allowable size ranges replace the ¾ inch minimum diameter size requirement allowance in effect prior to this action.

The Committee has observed in recent years that consumer demand has been increasing for smaller size potatoes and that those size potatoes often command premium prices. The Committee previously responded to this trend by modifying the size requirements in the handling regulations to allow for the handling of ¾ inch minimum diameter and larger size potatoes, if the potatoes otherwise meet the requirements of the U.S. No. 1 grade. However, the ¾ inch minimum size requirement had no other parameters associated with it and allowed for the commingling of small size potatoes (under 1⅞ inches in diameter) with larger size potatoes (over 1⅞ inches in diameter).

The Committee reiterated that quality assurance is important to the industry and to consumers. Providing consistent, high quality potatoes is necessary to maintain consumer confidence. The potential for mixing small size potatoes with larger size potatoes in the same container is perceived by the Committee as being contrary to the goals of maintaining orderly marketing conditions and ensuring that only consistent, high quality potatoes from

the production area enter the market. As such, the Committee felt that implementing revisions to the size requirements helps to maintain the consistency and quality of the product while still allowing the industry the maneuverability to respond to changing consumer preferences.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Based on Committee data, there are eight producers (the majority of whom are also handlers) in the regulated area and eight handlers (the majority of whom are also producers) subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000.

According to the Committee, 981,609 hundredweight of Colorado Area No. 3 potatoes were produced for the fresh market during the 2009–2010 season. Based on National Agricultural Statistics Service (NASS) data, the average producer price for Colorado summer potatoes for that season was $6.90 per hundredweight. The average annual producer revenue for the eight Colorado Area No. 3 potato producers is therefore calculated to be approximately $846,637. Using Committee data regarding each individual handler's total shipments during the 2009–2010 fiscal period and a Committee estimated average f.o.b. price for 2010 of $9.10 per hundredweight ($6.90 per hundredweight producer price plus estimated packing and handling costs of $2.20 per hundredweight), none of the Colorado Area No. 3 potato handlers ship over $7,000,000 worth of potatoes. Thus, all of the handlers and many of the producers of Colorado Area No. 3 potatoes may be classified as small entities.

This final rule makes revisions to the size requirements contained in the order's handling regulations. The rule revises the size requirements to establish two allowable size ranges—¾ inch minimum to 1⅞ inches maximum diameter and Size B—if such potatoes otherwise meet the requirements of the U.S. No. 1 grade standard. The revisions promote orderly marketing by ensuring that only potatoes of a similar size profile are shipped in the same container.

The authority for regulating grade and size is provided in § 948.22 of the order. Section 948.387(a) of the order's administrative rules and regulations prescribes the applicable size requirements.

This rule is expected to have a beneficial impact on handlers and producers by maintaining the superior reputation of the industry and ensuring that only consistent, high quality potatoes are shipped from the production area. There should be no extra cost to producers or handlers as a result of the changes because current harvesting and handling methods can accommodate the sorting of these smaller potatoes. The Committee believes that this revision will translate into greater returns for handlers and producers over time.

Neither NASS nor the Committee compiles statistics relating to the production of potatoes measuring less than 1⅞ inches in diameter. The Committee has relied on information provided by producers and handlers familiar with the small potato market for its recommendation.

As small potatoes have grown in popularity with consumers, high quality potatoes from Colorado have been in demand. The Committee believes that modifying the size requirements for such small potatoes will help maintain their consistency and increase their quality reputation in the market. The changes are expected to increase sales of Colorado potatoes and to benefit the Colorado potato industry. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

The Committee discussed alternatives to this recommendation, including taking no action on the matter. One alternative discussed was to use size ranges other than the ranges that the Committee eventually recommended. The Committee felt that the size ranges established by this rule offer the best compromise between regulatory control and accommodation of the marketing needs of the handlers. Another alternative was to establish just one ¾ inch to 1⅞ inches size range for small potatoes. However, that alternative was rejected because it would not have accommodated the mid-size range potatoes (1½ to 2¼ inches) that some handlers prefer to ship. Thus, the Committee unanimously agreed that their recommendation reflected the best alternative available to achieve the desired result.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action does not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

In addition, the Committee's meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 12, 2011, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on August 30, 2011 (76 FR 53842). Copies of the rule were made available by Committee staff to all Committee members and potato handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending October 31, 2011, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/*

MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping potatoes from the 2011–2012 crop and handlers want to take advantage of the revisions as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 948.387, revise paragraph (a) to read as follows:

§ 948.387 Handling regulation.

* * * * *

(a) *Minimum grade and size requirements—All varieties.* (1) U.S. No. 2 or better grade, 1⅞ inches minimum diameter or 4 ounces minimum weight.

(2) U.S. No. 1 grade, Size B (1½ inches minimum to 2¼ inches maximum diameter).

(3) U.S. No. 1 grade, ¾ inch minimum to 1⅞ inches maximum diameter.

* * * * *

Dated: December 14, 2011.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–32927 Filed 12–22–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[Document No. AMS–DA–11–0007; DA–11–02]

National Dairy Promotion and Research Program; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Dairy Promotion and Research Order (Dairy Order). The amendment modifies the number of National Dairy Promotion and Research Board (Dairy Board) members in eight regions, merges Region 8 and Region 10, merges Region 12 and Region 13, and apportions Idaho as a separate region. The total number of domestic Dairy Board members would remain the same at 36 and the total number of regions would be reduced from 13 to 12. This amendment was requested by the Dairy Board, which administers the Dairy Order, to better reflect the geographic distribution of milk production in the United States.

DATES: *Effective Date:* December 23, 2011.

FOR FURTHER INFORMATION CONTACT: Whitney A. Rick, Director, Promotion, Research and Planning Division, AMS, USDA, 1400 Independence Ave. SW., Room 2958–S, Stop 0233, Washington, DC 20250–0233. Phone: (202) 720–6909. Email: *Whitney.Rick@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to the Dairy Production Stabilization Act (Dairy Act) of 1983 [7 U.S.C. 4501–4514], as amended.

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have a retroactive effect. In accordance with section 4512(a) of the Dairy Act, this rule will not preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

The Dairy Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 4509 of the Dairy Act, any person subject to the Dairy Order may file with the Secretary of Agriculture (Secretary) a petition stating that the Dairy Order, any provision of the Dairy Order, or any obligation imposed in connection with the Dairy Order is not in accordance with the law and request a modification of the Dairy Order or to be exempted from the Dairy Order. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Dairy Act provides that the district court of the United States in any district in which the person is an inhabitant or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Dairy Act authorizes a national program for dairy product promotion, research and nutrition education. Congress found that it is in the public interest to authorize the establishment of an orderly procedure for financing (through assessments on all milk produced in the United States for commercial use and on imported dairy products) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products.

The Small Business Administration [13 CFR 121.201] defines small dairy producers as those having annual receipts of not more than $750,000 annually. Most of the producers subject to the provisions of the Dairy Order are considered small entities.

The final rule amends the Dairy Order by modifying the number of National Dairy Promotion and Research Board (Dairy Board) members in eight regions, merges Region 8 and Region 10, merges Region 12 and Region 13, and apportions Idaho as a separate region. The total number of domestic Dairy Board members remains the same at 36

and the total number of regions is reduced from 13 to 12. This modification was requested by the Dairy Board, which administers the Dairy Order, to better reflect the geographic distribution of milk production in the United States.

The Dairy Order is administered by a 38-member Dairy Board, 36 members representing 13 geographic regions within the United States and 2 representing importers. The Dairy Order provides in section 1150.131 that the Dairy Board shall review the geographic distribution of milk production throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from the regions in order to better reflect the geographic distribution of milk production volume in the United States. The Dairy Board is required to conduct the review at least every 5 years and not more than every 3 years. The Dairy Board was last modified in 2008 based on 2007 milk production.

Based on a review of the 2010 geographic distribution of milk production, the Dairy Board concluded that the number of Dairy Board members for eight regions should be changed. Additionally, the Dairy Board proposed to merge Region 8 and Region 10, merge Region 12 and Region 13, and apportion Idaho as a separate region.

This amendment will not have a significant economic impact on persons subject to the Dairy Order. The changes merely allow representation of the Dairy Board to better reflect geographic milk production in the United States.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], the information collection requirements and record keeping provisions imposed by the Dairy Order have been previously approved by OMB and assigned OMB Control No. 0581–0093. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this rule.

Statement of Consideration

The Dairy Order currently is administered by a 38-member Dairy Board, 36 members representing 13 geographic regions within the United States and 2 representing importers. The Dairy Order provides in section 1150.131 that the Dairy Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of regions and/or modification of the number of producer members from regions in order to best reflect the geographic distribution of milk production in the United States. The Dairy Board is required to conduct the review at least every 5 years and not more than every 3 years. The Dairy Board was last modified in 2008 based on 2007 milk production.

Since the Dairy Board's last reapportionment, the Dairy Order was amended by a final rule (importer final rule) [76 FR 14777, March 18, 2011] to implement an assessment on imported dairy products to fund promotion and research and to add importer representation, initially two members, to the Dairy Board. Additionally, the final rule amended the term ''United States'' in the Dairy Order to mean all States, the District of Columbia, and the Commonwealth of Puerto Rico. Assessments on producers in these areas were effective April 1, 2011. These amendments to the Dairy Order were implemented pursuant to the Farm Security and Rural Investment Act of 2008 (2008 Farm Bill) (Pub. L. 110–246).

In order to complement the current geographical makeup of the existing regions of the Dairy Board, the importer final rule added these four new jurisdictions to the region of closest proximity. Alaska was added to Region 1, currently comprised of Oregon and Washington; Hawaii was added to Region 2, currently California; and the District of Columbia and the Commonwealth of Puerto Rico were added to Region 10, currently comprised of Florida, Georgia, North Carolina, South Carolina and Virginia. These regional modifications were effective March 18, 2011, and were reflected in the importer final rule.

The importer final rule also modified the language in section 1150.131 of the Dairy Order to remove the specific formula for calculating the factor of pounds of milk per member, which divided total pounds of milk produced by 36, as the Dairy Board is now comprised of 38 members (36 domestic producers and 2 importer representatives). While the Dairy Order no longer specifies the procedure for calculating the factor of pounds of milk per member, for the purposes of the current reapportionment analysis, the procedure remains the same.

The importer final rule also added new language that requires the Secretary to review the average volume of imports of dairy products into the United States and, if warranted, reapportion the importer representation on the Dairy Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products. This review will take place at least once every 3 years, after the initial appointment of importer representatives on the Dairy Board.

In 2010, total milk production was 193,468 million pounds and each of the Dairy Board members would represent 5,374 million pounds of milk. For 2007, total milk production was 185,558 million pounds of milk and each of the Dairy Board members represented 5,154 million pounds of milk.

Based on the 2010 milk production data, the Dairy Board proposed that member representation in Region 1 (Alaska, Oregon, and Washington) be increased by one member. Milk production in Region 1 increased to 8,307 million pounds in 2010, up from 7,764 million pounds in 2007, indicating two Dairy Board members (8,307 divided by 5,374 = 1.545) compared to one Dairy Board member based on 2007 milk production data.

Milk production in Region 2 (California and Hawaii) decreased from 40,683 million pounds in 2007 to 40,410 million pounds in 2010. The Dairy Board proposed that seven Dairy Board members (40,410 divided by 5,374 = 7.519) represent Region 2, compared to eight Dairy Board members based on 2007 milk production data.

Milk production in Region 3 (Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming) increased from 21,212 million pounds in 2007 to 22,592 million pounds in 2010. Specifically, in Idaho, milk production increased from 10,905 million pounds in 2007 to 12,779 pounds in 2010 and represents more than half of the production of Region 3. Due to the increase in Idaho production, the Dairy Board proposed apportioning Idaho as its own region with two Dairy Board members.

Milk production in Region 8 (Alabama, Kentucky, Louisiana, Mississippi, and Tennessee) decreased from 3,119 million pounds in 2007 to 2,624 million pounds in 2010. The Dairy Board concluded that Region 8 no longer supports one Dairy Board member (2,624 divided by 5,374 = 0.488) and proposed to merge Region 8 into Region 10 (District of Columbia, Florida, Georgia, North Carolina, Puerto Rico, South Carolina, and Virginia) to create a new region with two Dairy Board members.

Similarly, milk production in Region 13 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) decreased from 4,046 million pounds in 2007 to 4,036 million pounds in 2010. The Dairy Board concluded

that Region 13 no longer supports one Dairy Board member (4,036 divided by 5,374 = 0.751) and proposed to merge Region 13 into Region 12 (New York), creating a new region with three Dairy Board members.

Accordingly, Table 1 summarizes by region, the volume of milk production distribution for 2010, the percentage of total milk production and the adopted regions and number of Dairy Board seats for each region.

TABLE 1—REGIONS AND NUMBER OF BOARD SEATS

Regions and states	Milk production (mil. lbs.)	Percentage of total milk production	Adopted number of board seats
1. Alaska, Oregon, Washington	8,307.1	4.3	2
2. California, Hawaii	40,410.3	21.0	7
3. Arizona, Colorado, Montana, Nevada, Utah, Wyoming	9,813.4	5.0	2
4. Arkansas, Kansas, New Mexico, Oklahoma, Texas	20,321	10.4	4
5. Minnesota, North Dakota, South Dakota	11,370	5.8	2
6. Wisconsin	26,035	13.5	5
7. Illinois, Iowa, Missouri, Nebraska	8,867	4.6	2
8. Idaho	12,779	6.6	2
9. Indiana, Michigan, Ohio, West Virginia	17,188	8.9	3
10. Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia	9,663	5.0	2
11. Delaware, Maryland, New Jersey, Pennsylvania	11,965	6.2	2
12. Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont	16,749.5	8.7	3
Total	193,468.3	100	36

* Milk Production, Disposition, and Income, 2010 Summary, NASS, 2011.
** Puerto Rico—Various Agricultural Statistics, 2010 Summary, NASS, 2011.

On August 30, 2011, the Department of Agriculture (Department) published in the **Federal Register** (76 FR 53844) a proposed rule to amend the Dairy Board as indicated above. Interested parties were provided an opportunity to file comments on the proposed rule on or before September 14, 2011. Two comments were received by the Department. One commenter expressed support for the proposed rule and noted that the proposal's criteria and methodology used to allocate board seats and resulting calculations for regional representation was consistent with the Dairy Order as recommended to the Secretary by the Dairy Board.

A second commenter suggested that milk production should not be the only criteria used in establishing regions. As noted in the proposed rule, the Dairy Act requires that Dairy Board members be nominated to represent specific geographical regions, and that each member represent an equal proportion of total U.S. milk production. No other criteria exist to be used in establishing regions, and therefore no other changes are made to the final rule based on this comment. Additionally, the commenter stated that when making appointments, the Secretary should consider geographical representation and select individuals based on their qualifications and experience in working within the dairy industry, dairy promotion, and commitment to serving the dairy farmers who contribute to the promotion and research program. AMS agrees with this assertion, as it is the Department's policy that board membership accurately reflects the diversity of the individuals served by the program.

This final rule adopts the proposed rule without change, and therefore member representation in Region 1 is increased from one member to two members; Region 2 representation is decreased from eight members to seven members; Region 3 is decreased from four members to two members; Region 8 and Region 10 are combined to create a new Region 10 with two members, and is comprised of Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia; Region 8 is now comprised of the State of Idaho with two members; Regions 12 and 13 are combined to create a new Region 12 and is comprised of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont with three members.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule should be in effect as soon as possible to appoint Board members for the 2011–2014 term.

List of Subjects in 7 CFR Part 1150

Dairy products, Milk, Promotion, Research.

For the reasons set forth in the preamble, 7 CFR part 1150 is amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

■ 1. The authority citation for part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4514 and 7 U.S.C. 7401.

■ 2. Section 1150.131 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(3), (b)(8), (b)(10), (b)(12), and removing paragraph (b)(13) to read as follows:

§ 1150.131 Establishment and membership.

* * * * *

(b) Thirty-six members of the Board shall be United States producers. For purposes of nominating producers to the Board, the United States shall be divided into twelve geographic regions and the number of Board members from each region shall be as follows:

(1) Two members from region number one comprised of the following States: Alaska, Oregon and Washington.

(2) Seven members from region number two comprised of the following States: California and Hawaii.

(3) Two members from region number three comprised of the following States: Arizona, Colorado, Montana, Nevada, Utah and Wyoming.

* * * * *

(8) Two members from region number eight comprised of the following State: Idaho.

* * * * *

(10) Two members from region number ten comprised of the following

States: Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Commonwealth of Puerto Rico, South Carolina, Tennessee, and Virginia.

* * * * *

(12) Three members from region number twelve comprised of the following States: Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

* * * * *

Dated: December 14, 2011.

David R. Shipman,

Acting Administrator.

[FR Doc. 2011–32931 Filed 12–22–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1940

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4290

RIN 0570–AA80

Rural Business Investment Program

AGENCY: Rural Business-Cooperative Service; Rural Utilities Service; Rural Housing Service; and Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Rural Business-Cooperative Service is amending its regulations for the Rural Business Investment Program (RBIP) to conform it to the 2008 Farm Bill, to add provisions for Rural Business Investment Companies (RBIC) that wish to participate in a non-leveraged capacity, and to make several clarifications to the existing rule for leveraged RBICs. In addition, this rule amends the categorical exclusions from the National Environmental Policy Act by adding categorical exclusions for the RBIP for both leveraged and non-leveraged RBICs.

DATES: *Effective date.* This rule will become effective January 23, 2012.

Comment date. Written comments on the rule must be received by the Agency or carry a postmark or equivalent no later than January 23, 2012. The comment period for the information collection under the Paperwork Reduction Act of 1995 ends January 23, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

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

FOR FURTHER INFORMATION CONTACT: *Regulation.* Michael Foore, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC, 20250; telephone number: (202) 690–4730; email: *michael.foore@wdc.usda.gov.*

Applications and other program materials. Mark Brodziski, Specialty Programs Division, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC 20250; telephone number: (202) 720–1400; email: *mark.brodziski@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a ''significant'' regulatory action under Executive Order 12866. Therefore, a regulatory assessment is not required.

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.860, Rural Business Investment Program.

Executive Order 12372

Executive Order 12372 requires intergovernmental consultation with State and local officials. For the Rural Business Investment Program, the Agency will conduct intergovernmental consultation in the manner delineated in 7 CFR part 3015, subpart V, which contains the Agency's regulations for implementing Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. Additionally, (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this interim rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Executive Order 13175

Between October 2010 and January 2011 the United States Department of Agriculture (USDA) hosted seven regional regulation Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities, and individuals. These sessions established a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country as needed. The policies contained in this rule do not have implications that preempt Tribal law.

Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant

economic impact on a substantial number of small entities. The Agency made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0570–0051.

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act, to provide increased opportunities for citizens to access Government information and services electronically.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., an Environmental Impact Statement is not required.

The granting or issuance of a license under the non-leveraged RBIP program is not considered a major federal action, as defined by Council on Environmental Quality at 40 CFR 1508.18, Regulations for Implementing the Procedural Provisions of the National Policy Act of 1969 (NEPA), and therefore does not require any further NEPA documentation.

I. Background

A. Rural Business Investment Program

On June 8, 2004, the Agency published an interim rule for the Rural Business Investment Program (RBIP) (69 FR 32200), a program to promote economic development and the creation of wealth and job opportunities among individuals living in rural areas and to help meet the equity capital investment needs primarily of smaller enterprises located in such areas. Under the RBIP, for-profit Rural Business Investment Companies (RBICs) make venture capital investments in rural areas with the objectives of fostering economic development in such areas and returning maximum profits to the RBIC's investors. The regulations set forth the criteria USDA uses to select and license RBICs, guarantee its debentures, and to make grants to RBICs.

Since the interim rule was published, the Food, Conservation, and Energy Program of 2008 (the 2008 Farm Bill) was enacted. The 2008 Farm Bill affects several provisions of the RBIP rule. Specifically, Section 6027 of the 2008 Farm Bill results in regulatory modifications associated with:

- Issuance and guarantee of trust certificates (7 U.S.C. 2009cc–5(b)(3)(A));
- Fees (7 U.S.C. 2009cc–6);
- Rural Business Investment Companies (7 U.S.C. 2009cc–8(c));
- Financial institution investments (7 U.S.C. 2009cc–9);
- Contracting of functions (7 U.S.C. 2009cc–16); and
- Funding (7 U.S.C. 2009cc–18).

In addition, the Agency is looking to amend the RBIP to allow RBICs to participate without financial leverage from the Agency. The Agency published an Advanced Notice of Proposed Rulemaking (ANPRM) on March 29, 2007, (72 FR 14712) requesting comments on operating the RBIP program to allow non-leveraged RBICs. Ten comment letters were received, which were generally supportive of the addition of non-leveraged RBICs to the program. The Agency also received seven comment letters on the Interim Rule, published on June 8, 2004 (69 FR 32200), implementing the Rural Business Investment Program. Of these seven letters, three mentioned a non-leveraged RBIC program and each was supportive of the Agency implementing a non-leveraged RBIC program.

The Agency is implementing a non-leveraged RBIC program because program funding for leveraged RBICs is not available at this time. However, the Agency believes the RBIP is a valuable program that will facilitate investment in rural areas even without federal financial assistance. The amendments implementing the non-leveraged RBIC provisions are similar to many of the provisions found in the U.S. Small Business Administration's (SBA) Small Business Investment Company (SBIC) non-leveraged program (7 CFR Part 107) and thus should be familiar to potential RBICs who may be interested in this program.

Lastly, the Agency is taking this opportunity to clarify several of the provisions of the regulation.

B. Categorical Exclusions From the National Environmental Policy Act

The RBIC program was modeled after SBA's SBIC program, which has been in effect for more than 40 years, and in 2005, as statutorily required, the Agency and SBA entered into an interagency agreement for SBA administrative support of the RBIP. To satisfy its requirements under the National Environment Policy Act (NEPA), SBA has in place a specific Categorical Exclusion (CatEx) for the SBIC program established under the SBA's Standard Operating Procedure Section 90 No. 57 in 7(f) (dated February 1, 1980). A categorical exclusion is a category of actions that do not individually or cumulative have a significant effect on the human environment. The SBIC CatEX provides that the following category of actions is categorically excluded from the preparation of Environmental Assessments or Environmental Impact Statements under NEPA:

Small Business Investment Company Program Actions. In those cases where the SBA is approving an SBIC action of financing construction of facilities or purchase of land, then the SBA may be required to prepare an environmental assessment.

Based upon the years of experience that SBA has had with the RBIP/SBIC program model, RBS is incorporating a similar CatEx into RBS's existing National Environmental Policy Act rule.

Because the overall RBIP approach is for a RBIC to provide working capital to its portfolio companies, there is little potential for on-the-ground impacts to the natural environment, while likely impacts to the human environment are increased employment and incomes to rural areas. To ensure that any investments will not result in project specific impacts to important resources, the CatEx provides for the preparation of an environmental assessment only ''(i)n those cases where the Agency is approving an RBIP action of financing construction for facilities or purchase and development of land.'' In addition, the Agency will not approve licenses for RBICs in only one geographic area, but will favor wide-spread areas for rural investments, thereby ensuring that no potential cumulative impacts might arise. In summary, the RBIP is a useful tool that helps the Agency accomplish one of its primary missions to advance rural development. The provision of a new CatEx for licensing RBIC's is justified by USDA's and SBA's

experience with RBIC and SBIC investments which, thus far, have had no significant impact to the natural environment, individually or cumulatively.

II. Discussion of Changes—Rural Business Investment Program

The following paragraphs discuss the changes being made to the RBIP regulations. As noted above, these changes are the result of (1) conforming the regulation to the 2008 Farm Bill, (2) incorporating provisions to allow RBICs to participate without leveraging, and (3) clarifying the existing regulation.

A. The Agency is adding a new section, § 4290.15, Leveraged and Non-leveraged Rural Business Investment Companies, to clarify which provisions of this part apply to leveraged RBICs and which apply to non-leveraged RBICs.

B. In § 4290.50, the Agency is amending several existing definitions and adding several others, as discussed below.

Community Development Finance. The current definition of Community Development Finance makes it possible for commercial bankers to qualify, even if they lack experience in debt securities or with equity-type instruments. This is not the Agency's intent. Therefore, the Agency is replacing ''debt'' with ''debt securities.''

Debenture. This definition is being revised to indicate that the debenture may be prepaid at any time without penalty. This change is being made in response to Section 6027(a) of the 2008 Farm Bill.

Includible Non-Cash Gains, Loans and Investments, Retained Earnings Available for Distribution, and *Undistributed Net Realized Earnings.* These definitions are being revised to make reference to ''or other USDA-approved form(s)).'' These definitions refer to specific SBA forms. The Agency may use other forms to implement this program in the future (for example, for non-leveraged RBICs). Thus, adding this phrase now will allow the Agency the flexibility to use other forms in the future should it so decide.

Institutional Investor. This definition is being revised, per Section 6027(d)(1) of the 2008 Farm Bill, to allow investment pools created entirely by a bank or savings association to be able to participate in the RBIP.

Leveraged RBIC and Non-leveraged RBIC. These terms are being defined in order to implement these regulations clearly as the result of the addition of provisions for non-leveraged RBICs.

Rural Area. This change is being made because the 2008 Farm Bill replaced the previous rural area definition specific to the RBIP with a new definition that applies to several Rural Development programs including the Business and Industry Guaranteed Loan program.

Secretary. This definition is being revised by adding ''his or her designee'' to provide flexibility in implementing the program.

State. This definition is being revised to conform to the latest definition being used in other Agency programs.

C. Section 4290.110 is being revised by adding the phrase ''(and any other aspect identified by the USDA in a **Federal Register** notice).'' This is being added to provide the Agency flexibility should other aspects associated with qualified management need to be considered.

D. Section 4290.200 is being clarified by replacing ''§ 4290.200'' with ''§ 4290.210'' so that the paragraph does not unnecessarily refer back to itself.

E. Under § 4290.210, the Agency is adding ''Unless otherwise specified in a **Federal Register** notice'' to paragraph (a) of this section. This is being done to provide the Agency flexibility to specify other Capital requirements, within the constraints of the authorizing statute, if it should subsequently determine such are needed for either leveraged RBICs or non-leveraged RBICs.

In addition, the Agency is adding a new paragraph that addresses the time frame that each RBIC will have to meet the capital requirements set forth in the section. This change is being made in response to Section 6027(c) of the 2008 Farm Bill.

F. In § 4290.300, the Agency is replacing ''using the application packet'' with ''using an appropriate application packet.'' This is being done because of the provisions for non-leveraged RBICs, which are likely to use a different application packet than leveraged RBICs.

G. In § 4290.330, the Agency is renaming the section to include reference to guarantees, so that the section applies to issuance fees for both grants and debenture guarantees. In addition, the section is being amended to set the amount of fee that the Agency will charge for the issuance of a grant or debenture guarantee at $500. This fee amount is also applicable if the Agency issues both a grant and debenture guarantee. These amendments are being made in response to Section 6027(b)(1) of the 2008 Farm Bill.

H. Section 4290.503(e)(2) is being revised to make reference to ''or other USDA-approved form(s)'' for the same reason cited earlier in paragraph B of the preamble. In addition, the SBA Web site reference in § 4290.503(a) has been updated.

I. Section 4290.504(a) is being revised by removing ''for which you will receive the necessary software'' because it is unnecessary to the implementation of the equipment and office requirements covered in this section.

J. Section 4290.509(a) is being clarified by adding the phrase ''whichever is later.''

K. Several changes are being made to § 4290.550 as follows:

First. In paragraph (a), the Agency is replacing ''In this 4290.550'' with ''For the purposes of this section,'' to more appropriately characterize the applicability of the section.

Second. In paragraph (b), the Agency is adding ''or other USDA-approved form(s)'' for the same reasons cited in paragraph B of the preamble.

Third. In paragraph (c), the Agency is replacing ''under this § 4290.550'' with ''under this section'' to more appropriately characterize the application of the section.

Fourth. The Agency is adding the word ''and'' to the end of paragraph (d)(2) to clarify that all three conditions are to be met.

L. The SBA Web site reference in § 4290.600(a) and (d) have been updated.

M. Section 4290.610(b) is being amended to make reference to ''or other USDA-approved form(s)'' for the same reason cited earlier in paragraph B of the preamble.

N. Several paragraphs in § 4290.630, including the title to the section, and § 4290.640 and its title are being revised by either removing reference to a specific SBA form number or adding reference to ''or other USDA-approved form(s)'' for the same reasons cited in paragraph B of the preamble. In addition, the SBA Web site reference in § 4290.630(c) has been updated.

O. In § 4290.720, the Agency is making three changes as described below.

First. In the examples presented in paragraph (d)(1), the Agency is removing reference to ''wind farms, or power facilities (including solar, geothermal, hydroelectric, or biomass power facilities)'' because such enterprises are now integral to the Agency's mission for energy development in rural America.

Second. The Agency is changing paragraph (i) by replacing ''15 percent'' with ''25 percent.'' This change is being made in response to Section 6027(d)(2) of the 2008 Farm Bill.

Third. In paragraph (i), the Agency is replacing reference to ''Regulatory Capital'' with reference to the

''ownership interests'' of a RBIC, either alone or in conjunction with other System institutions. This change is being made to align the program with 7 U.S.C. 2009cc–9(c).

P. The Agency is revising § 4290.740 in two ways. First, the Agency is changing the calculation of the ''overline'' limitation by changing ''20 percent'' to read ''10 percent'' and changing the base that the 10 percent is calculated from just Regulatory Capital (with regulatory permitted Distributions) to Regulatory Capital (with regulatory permitted Distributions) and Leverage. Second, the Agency is changing ''current cost'' to read ''original cost'' in paragraph (b).

The Agency is making these changes for several reasons. First, the changes provide the RBIC with greater flexibility in making its portfolio investments without board approval, which is consistent with industry standards. Second, the changes make the RBIC program more consistent with the SBIC program, which implemented a similar provision in the SBIC program in 2009. Third, these changes further our efforts to model the RBIC program after the SBIC program, as directed in the Conference Report (H.R. 107–424) of the authorizing statute for the RBIC program (Farm Security and Rural Investment Act of 2002). Specifically the Conference Report stated that ''It is the expectation of the Managers that a considerable share of the rules and operating procedures for this program will be the same as the rules and operating procedures for the Small Business Investment Company program.''

Q. The Agency is revising § 4290.815(b) to remove ''If you have outstanding Leverage or plan to obtain Leverage'' because this phrase is unnecessary for leveraged RBICs and could create confusion as whether the paragraph would apply to non-leveraged RBICs and, if so, how.

R. Section 4290.1220 is being revised to make reference to ''or other USDA-approved form(s)'' for the same reason cited paragraph B of the preamble.

S. Several paragraphs in § 4290.1230 are being revised by either removing reference to a specific SBA form number or adding reference to ''or other USDA-approved form(s)'' for the same reasons cited paragraph B of the preamble.

T. The Agency is revising § 4290.1600(d) by removing reference to ''fees'' in the list of items that the Secretary may establish and in its place adding a provision to allow agents of the Secretary to collect a fee of not more than $500 when they perform the functions described in 7 U.S.C. 2009cc–5(e)(2). These changes are being made in response to Section 6027(b)(2) of the 2008 Farm Bill.

U. The Agency is revising § 4290.1810(a) by replacing ''By issuing Debentures'' with ''Upon acceptance of a license to operate as a RBIC'' and adding ''all documents relating to the license, including, without limitation, the Participation Agreement and.'' These changes are being made so that these provisions are applicable to both leveraged RBICs and non-leveraged RBICs.

V. Lastly, the Agency is proposing to amend this part by adding a new subpart O to allow a RBIC to apply for a license without leverage. In response to the March 29, 2007, ANPRM, the Agency received 10 comment letters, which favored allowing non-leveraged RBICs under the RBIP. The Agency also had received comment letters on the RBIP Interim Rule, of which three addressed a non-leveraged RBIC program. All three comment letters encouraged the Agency to consider a non-leveraged RBIC program. The provisions in the subpart for non-leveraged RBICs are based primarily on comments received on the March 29, 2007, ANPRM and on similar provisions found in the SBA's SBIC non-leveraged program.

Some of the key aspects of the provisions for non-leveraged RBICs are:

- The Agency rather than SBA will be responsible for implementing the non-leveraged RBIC provisions.
- The Agency will announce in a **Federal Register** notice those types of investors in the RBIC that are eligible to participate as a non-leveraged RBIC. If the eligible categories/types of investors changes, the Agency will publish subsequent notices in the **Federal Register** updating the list. However, such changes will not be applied retroactively.
- Applications for non-leveraged status will be accepted at any time during the year.
- While the Agency may select one, more than one, or none of the applying RBICs for participation as a non-leveraged RBIC, such selection will not be made on a competitive basis.

Most of the provisions for leveraged RBICs would be applicable to non-leveraged RBICs. However, there are a number of provisions (either a section or a paragraph) for leveraged RBICs that will not be applicable to non-leveraged RBICs. There are also a number of leveraged RBIC provisions that have been modified as that provision would be applied to non-leveraged RBICs. Finally, there are two subparts (subpart J, Financial Assistance for RBICs, and subpart N, Operational Assistance Grants for RBICs) that would not be applicable in their entirety to non-leveraged RBICs.

III. Discussion of Changes—Categorical Exclusion From NEPA

A new paragraph (c)(7) is being added to 7 CFR 1940.310 to incorporate the new categorical exclusions for the RBIP. This new paragraph is set out in the regulatory text of this rule.

As noted above, this change is being made based on the RBIP being based its similarity to and derivation from the SBA's SBIC program, which has a similar CatEx provision for their SBIC program, and the experience of the SBIC program in which, thus far, no significant impact to the natural environment, individually or cumulatively, has occurred.

List of Subjects

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 4290

Community development, Government securities, Grant programs—business, Securities, Small businesses.

For the reasons stated in the preamble, part 1940 of Chapter XVIII and part 4290 of Chapter XLII of the Code of Federal Regulations are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1940—GENERAL

■ 1. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart G—Environmental Program

■ 2. Section 1940.310 is amended by adding a new paragraph (c)(7) to read as follows:

§ 1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.

* * * * *

(c) * * *

(7) Rural Business Investment Program actions, which can be divided into:

(i) Non-leveraged program actions that include licensing by USDA of Rural

Business Investment Companies (RBIC); and

(ii) Leveraged program actions that include licensing by USDA of RBIC and Federal financial assistance in the form of technical grants or guarantees of debentures of an RBIC, unless such federal assistance is used to finance construction or development of land.

* * * * *

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4290—RURAL BUSINESS INVESTMENT COMPANY (RBIC) PROGRAM

■ 3. The authority citation for part 4290 continues to read as follows:

Authority: 7 U.S.C. 1989 and 2099cc *et seq.*

Subpart A—Introduction to Part 4290

■ 4. A new § 4290.15 is added to read as follows:

§ 4290.15 Leveraged and Non-leveraged Rural Business Investment Companies.

The regulations in this part apply to rural business investment companies (RBICs) that seek leverage and to RBICs that do not seek leverage. The provisions of subparts A through N of this part apply to Leveraged RBICs and, except as indicated or as otherwise modified by subpart O of this part, to Non-leveraged RBICs. The provisions in subpart O of this part apply to Non-leveraged RBICs and, in addition, modify certain provisions in subparts A through N of this part as they apply to Non-leveraged RBICs.

Subpart B—Definition of Terms Used in Part 4290

■ 5. Section 4290.50 is amended by:

■ a. Revising the definitions of *Community Development Finance, Debenture, Includible Non-Cash Gains, Loans and Investments, Retained Earnings Available for Distribution, Rural Area, Secretary, State, and Undistributed Net Realized Earnings;*

■ b. Revising paragraph (1)(i) of the definition of *Institutional Investor;* and

■ b. Adding definitions of *Leveraged RBIC* and *Non-leveraged RBIC* in alphabetical order.

The revisions and additions read as follows:

§ 4290.50 Definition of terms.

* * * * *

Community Development Finance means debt securities or equity-type investments in Rural Areas.

* * * * *

Debenture means a debt obligation issued by RBICs pursuant to section 384E of the Act and held or guaranteed by the Secretary. A Debenture may be prepaid at any time without penalty.

* * * * *

Includible Non-Cash Gains means those non-cash gains (as reported on SBA Form 468 or other USDA-approved form(s)) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated ''BBB'' or ''Baa'', or better, by Standard & Poor's Corporation or Moody's Investors Service, respectively. Non-rated debt may be considered to be investment grade if a RBIC obtains a written opinion from an investment banking firm acceptable to the Secretary stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

Institutional Investor * * *

(1) * * *

(i) A State or National bank, Farm Credit System Institution, trust company, savings bank, or savings and loan association, including an investment pool created entirely by such bank or savings association, the deposits of which are insured under the Federal Deposit Insurance Act.

* * * * *

Leveraged RBIC means a RBIC that received financial assistance under this part.

* * * * *

Loans and Investments means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating Enterprises acquired, and notes and other securities received, as set forth in the Statement of Financial Position on SBA Form 468 or other USDA-approved form(s).

* * * * *

Non-leveraged RBIC means a RBIC that has not received financial assistance under this part.

* * * * *

Retained Earnings Available for Distribution means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468 or other USDA-approved form(s)), and represents the amount that a RBIC may distribute to investors as a profit Distribution, or transfer to Private Capital.

Rural Area means any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are ''not urban in character.''

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the USDA shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is ''rural in character'' will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is ''rural in character'' under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000

inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to both the appropriate Rural Development State Director and the Rural Business-Cooperative Service Administrator of USDA on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

* * * * *

Secretary means the Secretary of Agriculture or his or her designee.

* * * * *

State means each of the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Federated States of Micronesia.

* * * * *

Undistributed Net Realized Earnings means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468 or other USDA-approved form(s).

* * * * *

Subpart C—Qualifications for the RBIC Program

■ 6. Section 4290.110 is revised to read as follows:

§ 4290.110 Qualified management.

An Applicant must show, to the satisfaction of the Secretary, that its current or proposed management team is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Venture Capital Finance, necessary for investing in the types of Enterprises contemplated by the Act, regulations in this part, and its business plan. In determining whether an Applicant's current or proposed management team has sufficient qualifications, the Secretary will consider information provided by the Applicant and third parties concerning the background, capability, education, training and reputation (and any other managerial aspect identified by the USDA in a **Federal Register** notice) of its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with the Secretary.

■ 7. Section 4290.200 is revised to read as follows:

§ 4290.200 Adequate capital for RBICs.

You must meet the requirements of §§ 4290.210 through 4290.230 in order to qualify as a RBIC.

■ 8. Section 4290.210 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 4290.210 Minimum capital requirements for RBICs.

(a) *General Rule.* Unless otherwise specified in a **Federal Register** notice, you must have Regulatory Capital of at least $10,000,000, or such lesser amount (but not less than $5,000,000) and Leverageable Capital of at least $500,000, to become a RBIC.

* * * * *

(c) *Time frame.* Each RBIC shall have a period of 2 years to meet the capital requirements set forth in this section.

Subpart D—Application and Approval Process for RBIC Licensing

■ 9. Section 4290.300(b) is revised to read as follows:

§ 4290.300 When and how to apply for a RBIC license.

* * * * *

(b) *Application form.* An Applicant must apply for a RBIC license using an appropriate application packet provided by the Secretary. Upon receipt of a completed application packet, the Secretary may request clarifying or technical information on the materials submitted as part of the application.

■ 10. Section 4290.330 is revised to read as follows:

§ 4290.330 Grant and guarantee issuance fee.

The Applicant must pay to the Secretary an issuance fee for each grant or debenture guarantee of $500. If both a grant and debenture guarantee are issued for the same RBIC, the issuance fee for both is $500. An Applicant must submit this fee in advance, at the time of application submission.

Subpart G—Managing the Operations of a RBIC

■ 11. Section 4290.503 is amended by revising paragraphs (a) and (e)(2) to read as follows:

§ 4290.503 RBIC's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division or at *http://www.sba.gov/sites/default/files/files/inv_valuation.pdf.*

* * * * *

(e) * * *

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468 or other USDA-approved form(s)) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

■ 12. Section 4290.504 is amended by revising paragraph (a) to read as follows:

§ 4290.504 Equipment of USDA or SBA officials.

(a) *Computer capability.* You must have a personal computer with access to the Internet and be able to use this equipment to prepare reports and transmit such reports to the Secretary. In addition, you must have the capability to send and receive electronic mail.

* * * * *

■ 13. Section 4290.509 is amended by revising paragraph (a) introductory text to read as follows:

§ 4290.509 Employment of USDA or SBA officials.

(a) Without the Secretary's prior written approval, for a period of two

years after the date of your most recent issuance of Leverage or after the receipt of any assistance as defined in paragraph (b) of this section, whichever is later, you are not permitted to employ, offer employment to, or retain for professional services, any person who:

* * * * *

■ 14. Section 4290.550 is amended by revising paragraphs (a), (b), (c), and (d)(2) to read as follows:

§ 4290.550 Prior approval of secured third-party debt of RBICs.

(a) *Definition.* For the purposes of this section, ''secured third-party debt'' means any debt that is secured by any of your assets and not guaranteed by the Secretary, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get the Secretary's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual SBA Form 468 or other USDA-approved form(s)) are comparable.

(c) *Conditions for approval.* As a condition of granting its approval under this section, the Secretary may impose such restrictions or limitations as he or she deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). The Secretary will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) * * *

(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1; and

* * * * *

Subpart H—Recordkeeping, Reporting, and Examination Requirements for RBICs

■ 15. Section 4290.600 is amended by revising paragraphs (a) and (d) to read as follows:

§ 4290.600 General requirement for RBIC to maintain and preserve records.

(a) Maintaining your accounting records. You must establish and maintain your accounting records using SBA's standard chart of accounts for SBICs, unless the Secretary approves otherwise. You may obtain this chart of accounts from SBA or at *http://www.sba.gov/sites/default/files/files/inv_charts_of_accounts.pdf.*

* * * * *

(d) *Additional requirement.* You must comply with the recordkeeping and record retention requirements set forth in Circular A–110 of the Office of Management and Budget. (OMB Circulars are available from the addresses listed in 5 CFR 1310.3 and at *http://www.whitehouse.gov/omb/circulars_default.*)

■ 16. Section 4290.610 is amended by revising paragraph (b) to read as follows:

§ 4290.610 Required certifications for Loans and Investments.

* * * * *

(b) For each Financing made to a Small Business Concern, Size Status Declaration (SBA Form 480 or other USDA-approved form(s)), executed both by you and by the Portfolio Concern certifying that the concern is a Small Business Concern. For securities purchased from an underwriter in a public offering, you may substitute a prospectus showing that the concern is a Small Business Concern.

* * * * *

■ 17. Section 4290.630 is amended by revising paragraphs (a) introductory text, (a)(1), (b) through (e), and (f) introductory text to read as follows:

§ 4290.630 Requirement for RBICs to file financial statements and supplementary information with the Secretary.

(a) *Annual filing.* For each fiscal year, you must submit financial statements and supplementary information prepared on SBA Form 468 or other USDA-approved form(s). You must file SBA Form 468 (or other USDA-approved form(s)) on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of annual filing form.* An independent public accountant acceptable to the Secretary must audit the annual form submitted under paragraph (a) of this section.

* * * * *

(b) *Interim filings.* When requested by the Secretary, you must file interim reports on SBA Form 468 or other USDA-approved form(s). The Secretary may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under a Leverage commitment, you must also comply with any applicable filing requirements set forth in § 4290.1220.

(c) *Standards for preparation.* You must prepare SBA Form 468 or other USDA-approved form(s) in accordance with SBA's Accounting Standards and Financial Reporting Requirements for SBICs, which you may obtain from SBA or at *http://www.sba.gov/content/accounting-standards-sbics.*

(d) *Where to file.* Unless otherwise identified in a notice published in the **Federal Register**, submit all filings of forms under this section to the Investment Division of SBA.

(e) *Reporting of economic development impact information for each Financing.* Your annual filing of SBA Form 468 or other USDA-approved form(s) must include an assessment of the economic development impact of each Financing. This assessment must specify the fulltime equivalent jobs created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in Rural Areas.

(f) *Reporting of economic development information for certain Financings.* For each Rural Business Concern Investment and each Smaller Enterprise Investment, your SBA Form 468 or other USDA-approved form(s) must include an assessment of each such Financing with respect to:

* * * * *

■ 18. Section 4290.640 is revised to read as follows:

§ 4290.640 Requirement to file portfolio financing reports with the Secretary.

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 or other USDA-approved form(s) within 30 days of the closing date.

■ 19. Section 4290.692 is amended by revising paragraph (d) to read as follows:

§ 4290.692 Examination Fees.

* * * * *

(d) *Examination delay fee.* If, in the sole discretion of the Secretary, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, the Secretary may assess an additional examination fee of up to $500 per day.

Subpart I—Financing of Enterprises by RBICs

■ 20. Section 4290.720 is amended by revising paragraphs (d)(1) and (i) to read as follows:

§ 4290.720 Enterprises that may be ineligible for Financing.

* * * * *

(d) * * *

(1) The assets of the Enterprise are to be reduced or consumed, generally without replacement, as the life of the Enterprise progresses, and the nature of the Enterprise requires that a stream of cash payments be made to the Enterprise's financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects and oil and gas wells; or

* * * * *

(i) *Entities ineligible for Farm Credit System Assistance.* If one or more Farm Credit System Institutions or their Affiliates owns more than 25 percent of the ownership interests of a Rural Business Investment Company, either alone or in conjunction with other Farm Credit System Institutions (or affiliates), the Rural Business Investment Company may not provide Financing to any entity that is not otherwise eligible to receive Financing from a Farm Credit System Institution under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*).

* * * * *

■ 21. Section 4290.740 is amended by revising paragraphs (a) introductory text and (a)(2), adding a new paragraph (a)(3), and revising paragraph (b) to read as follows:

§ 4290.740 Portfolio diversification (''overline'' limitation).

(a) Without the Secretary's prior written approval, you may provide Financing or a Commitment to an Enterprise only if the resulting amount of your aggregate outstanding Financings and Commitments to that Enterprise and its Affiliates does not exceed 10 percent of the sum of:

* * * * *

(2) Any permitted Distribution(s) you made during the five years preceding the date of the Financing or Commitment which reduced your Regulatory Capital; plus

(3) The total amount of Leverage provided to the Rural Business Investment Company by the Secretary since it was licensed under § 4290.390.

(b) For the purposes of paragraph (a) of this section, you must measure each outstanding Financing at its original cost plus any amount of the Financing that was previously written off.

■ 22. Section 4290.815 is amended by revising paragraph (b) introductory text to read as follows:

§ 4290.815 Financings in the form of Debt Securities.

* * * * *

(b) *Restriction of options obtained by RBIC's management and employees.* Your employees, officers, directors, general partners, or managing members, or the general partners or managing members of your Investment Advisor/Manager, may obtain options in a Portfolio Concern only if:

* * * * *

Subpart J—Financial Assistance for RBICs (Leverage)

■ 23. Section 4290.1220 is amended by revising paragraph (a) to read as follows:

§ 4290.1220 Requirement for RBIC to file financial statements at the time of request for a draw.

(a) If you submit a request for a draw against your Leverage commitment more than 90 days following your submission of an annual SBA Form 468 or a SBA Form 468 (Short Form) or other USDA-approved form(s), you must:

(1) Give the Secretary a financial statement on Form 468 (Short Form) or other USDA-approved form(s), and

(2) File a statement of no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s).

* * * * *

■ 24. Section 4290.1230 is amended by revising paragraphs (d)(1), (d)(2), and (e)(1) to read as follows:

§ 4290.1230 Draw-downs by RBIC under Leverage commitment.

* * * * *

(d) * * *

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s) (see also § 4290.1220 for filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 or other USDA-approved form(s) in accordance with § 4290.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form) or other USDA-approved form(s).

* * * * *

(e) * * *

(1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 or other USDA-approved form(s) confirming the closing of the transaction.

* * * * *

■ 25. Section 4290.1600 is amended by revising paragraph (d) to read as follows:

§ 4290.1600 Secretary's authority to issue and guarantee Trust Certificates.

* * * * *

(d) *Formation of a Pool or Trust holding Leverage Securities.* The Secretary shall approve the formation of each Pool or Trust. The Secretary may, in his or her discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust he or she deems appropriate. Notwithstanding § 4290.1130(c), any agent of the Secretary may collect a fee for the functions described in 7 U.S.C. 2009cc–5(e)(2) that does not exceed $500.

Subpart K—RBIC's Noncompliance With Terms of Leverage

■ 26. Section 4290.1810 is amended by revising paragraph (a) to read as follows:

§ 4290.1810 Events of default and the Secretary's remedies for RBICs noncompliance with terms of Debentures.

(a) *Applicability of this section.* Upon acceptance of a license to operate as an RBIC, you automatically agree to the terms, conditions and remedies in this section, as in effect at the time of issuance of the license and as fully set forth in all documents relating to the license, including, without limitation, the Participation Agreement and Debentures.

* * * * *

■ 27. Section 4290.1840 is amended by revising paragraph (b)(1) to read as follows:

§ 4290.1840 Computation of RBIC's Capital Impairment Percentage.

* * * * *

(b) * * *

(1) The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468 or other USDA-approved form(s) and Includible Non-Cash Gains.

* * * * *

28. A new subpart O is added to read as follows:

Subpart O—Additional Requirements for Non-Leveraged Licensees and Exceptions to Regulations

Sec.

4290.3000 Non-leveraged RBICs—General.
4290.3001–4290.3002 [Reserved]
4290.3003 Responsibility for implementing Non-leveraged RBICs.
4290.3004 [Reserved]
4290.3005 Qualifications for the Non-leveraged RBIC Program.
4290.3006–4290.3009 [Reserved]
4290.3010 Application and Approval Process for RBIC licensing without Leverage.
4290.3011–4290.3014 [Reserved]
4290.3015 Evaluation and selection of Non-leveraged RBICs.
4290.3016–4290.3019 [Reserved]
4290.3020 Changes in Ownership, Structure, or Control.
4290.3021–4290.3024 [Reserved]
4290.3025 Managing the Operations of a RBIC.
4290.3026–4290.3029 [Reserved]
4290.3030 Financing of Enterprises by RBICs.
4290.3031–4290.3034 [Reserved]
4290.3035 Recordkeeping, Reporting, and Examination Requirements for RBICs.
4290.3036–4290.3039 [Reserved]
4290.3040 Financial Assistance for RBICs.
4290.3041 Events of default and the Secretary's remedies for RBIC's noncompliance with terms of Debenture.
4290.3042–4290.3044 [Reserved]
4290.3045 Computation of RBIC's Capital Impairment.
4290.3046–4290.3049 [Reserved]
4290.3050 Operational Assistance Grants for RBICs.
4290.3051–4290.3099 [Reserved]

Subpart O—Additional Requirements for Non-Leveraged Licensees and Exceptions to Regulations

§ 4290.3000 Non-leveraged RBICs—General.

This subpart identifies provisions specific to RBICs seeking a non-leveraged license, including exceptions and additions to provisions associated with subparts A through N of this part.

§§ 4290.3001–4290.3002 [Reserved]

§ 4290.3003 Responsibility for implementing Non-leveraged RBICs.

Section 4290.45 does not apply to Non-leveraged RBICs. Instead, for the purposes of this part as it applies to Non-leveraged RBICs, all authorities and responsibilities assigned to the Secretary under this part shall be carried out by the Secretary, and none shall be delegated to the U.S. Small Business Administration (SBA) or the Administrator. Thus, when applying subparts A through N of this part to Non-leveraged RBICs, all references to the Small Business Association (SBA) or Administrator on behalf of USDA shall be read as the Secretary. All forms shall be submitted to USDA or its designee.

§ 4290.3004 [Reserved]

§ 4290.3005 Qualifications for the Non-leveraged RBIC Program.

(a) *Business form.* In addition to complying with the applicable provisions of § 4290.100 not otherwise modified by this section, paragraphs (a)(1) through (a)(4) of this section apply.

(1) For RBICs applying for non-leveraged status, the types of investors eligible to invest in a RBIC must have been approved by the Secretary. Investors seeking approval must submit a request to the Secretary with sufficient documentation to support their request. The USDA will announce such approved categories and types of investors in a public notice published in the **Federal Register** from time to time. Subsequent notices that modify the types of investors eligible to invest in a RBIC will not be applied retroactively.

(2) In lieu of complying with § 4290.100(d)(1)(i), you must have a minimum duration of 10 years. After 10 years, the Partnership RBIC may be terminated by a vote of your partners.

(3) In lieu of complying with § 4290.100(d)(2), if you are a LLC RBIC, you must have a minimum duration of 10 years. After 10 years, the LLC RBIC may be terminated by a vote of your members.

(4) In lieu of complying with § 4290.100(d)(3), if you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders.

(b) *Approval of initial Management Expenses.* Section 4290.140 does not apply to Non-leveraged RBICs. However, the Secretary will provide a cap on these expenses in each **Federal Register** notice soliciting applications for Non-leveraged RBICs.

(c) *Management and ownership diversity requirements.* A Non-leveraged RBIC is subject to the provisions of § 4290.150 unless it is exempted from these provisions by the Secretary. Exemptions will only be granted when the applicant establishes, to the satisfaction of the Secretary, that granting the exemption will not unduly impair the integrity and soundness of the Non-leveraged RBIC.

(d) *Special rules for Partnership RBICs and LLC RBICs.* Paragraph (c) of § 4290.160 does not apply to Non-leveraged RBICs.

§§ 4290.3006–4290.3009 [Reserved]

§ 4290.3010 Application and Approval Process for RBIC licensing without Leverage.

(a) The provisions of § 4290.300 notwithstanding, the Secretary will accept, at any time, applications for consideration as a Non-leveraged RBIC. The number of applications that the Agency will receive each year, and any fees and conditions, will be announced annually in a **Federal Register** notice.

(b) The provisions specified in § 4290.340(d) do not apply to this subpart.

(c) The provisions specified in § 4290.370(m) do not apply to this subpart.

§§ 4290.3011–4290.3014 [Reserved]

§ 4290.3015 Evaluation and selection of Non-leveraged RBICs.

(a) *General.* Notwithstanding any other provision in this part, when selecting applications for non-leveraged status, the Secretary may select one or more applications, or none, for further consideration based on the evaluation criteria of this part.

(b) *Eligibility and completeness.* In addition to the requirements specified in § 4290.350, an Applicant under this subpart must complete a written application that includes information not otherwise exempted by the Secretary, in his or her sole discretion. The Secretary may, on his or her own initiative, exempt material from a Non-leveraged RBIC application where the Secretary determines it impedes an expedited process without a commensurate benefit to the program. To the extent that the Secretary's exemption applies to the entire program, an announcement of the exemption will be published in the **Federal Register**. The Secretary shall make a decision as to licensing an Applicant after the receipt of a complete application and will enter into a Participation Agreement with the RBIC if approved.

(c) *Effect of a RBIC license.* Paragraphs (d)(2) and (d)(3) of

§ 4290.390 do not apply to Non-leveraged RBICs.

§§ 4290.3016–4290.3019 [Reserved]

§ 4290.3020 Changes in Ownership, Structure, or Control.

Paragraph (b) in § 4290.440 does not apply to Non-leveraged RBICs.

§§ 4290.3021–4290.3024 [Reserved]

§ 4290.3025 Managing the Operations of a RBIC.

(a) *Nonperformance.* In addition to the provisions specified in § 4290.507, failure of an approved Non-leveraged RBIC to maintain sound investment practice, as determined by the Secretary, may result in loss of approval for participating in this program.

(b) *Employment of USDA or SBA officials.* Paragraph (a)(2) of § 4290.509 does not apply to Non-leveraged RBICs.

(c) *Approval of RBIC's Investment Adviser/Manager.* In addition to complying with § 4290.510, a Non-leveraged RBIC must notify the Secretary of the Management Expenses to be incurred under such contract, or of any subsequent material changes in such Management Expenses, within 30 days of execution.

(d) *Management Expenses of a RBIC.* When complying with § 4290.520, Non-leveraged RBICs do not need prior approval of initial Management Expenses and any increases in those expenses.

(e) *Restrictions on investments of idle funds by RBICs.* The provisions of § 4290.530 apply to Non-leveraged RBICs only when the Non-leveraged RBIC engages in activities not contemplated by the Act.

(f) *Prior approval of secured third-party debt of RBICs.* The provisions of § 4290.550 do not apply to Non-leveraged RBICs.

(g) *Voluntary decrease in Regulatory Capital.* When complying with § 4290.585, Non-leveraged RBICs do not need to obtain prior approval for decreases in Regulatory Capital of more than 2 percent (but not below the minimum required under this Act or these regulations). However, Non-leveraged RBICs must report the reduction to the Secretary within 30 days.

§§ 4290.3026–4290.3029 [Reserved]

§ 4290.3030 Financing of Enterprises by RBICs.

(a) *Non-compliance with this section.* The last sentence of § 4290.700(e) does not apply to Non-leveraged RBICs.

(b) *Enterprises that may be ineligible for Financing.* The provisions associated with real estate enterprises found in § 4290.720(c) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Secretary in accordance with § 4290.1920.

(c) *Farmland purchases.* The provisions associated with farmland purchases found in § 4290.720(e) apply to Non-leveraged RBICs unless the Non-leveraged RBIC requests, and has received, an irrevocable exemption from the Secretary in accordance with § 4290.1920.

(d) *Purchasing securities from an underwriter or other third party.* Non-leveraged RBICs are exempt from the recordkeeping requirements and fee limitations in § 4290.825(b) and (c), respectively, for securities purchased through or from an underwriter.

(e) *Assets acquired in liquidation of Portfolio securities.* The provisions of § 4290.880 do not apply to Non-leveraged RBICs.

§§ 4290.3031–4290.3034 [Reserved]

§ 4290.3035 Recordkeeping, Reporting, and Examination Requirements for RBICs.

Except for § 4290.600(d), Subpart H, Recordkeeping, Reporting, and Examination Requirements for RBICs, of this part applies to Non-leveraged RBICs.

§§ 4290.3036–4290.3039 [Reserved]

§ 4290.3040 Financial Assistance for RBICs.

Subpart J, Financial Assistance for RBICs (Leveraged), of this part does not apply to Non-leveraged RBICs.

§ 4290.3041 Events of default and the Secretary's remedies for RBIC's noncompliance with terms of Debenture.

In addition to complying with the provisions of § 4290.1810, a RBIC's failure to comply with the terms of this part may result in the Secretary revoking the Non-leveraged RBIC's license issued under this part.

§§ 4290.3042–4290.3044 [Reserved]

§ 4290.3045 Computation of RBIC's Capital Impairment.

The provisions specified in §§ 4290.1830 and 4290.1840 do not apply to Non-leveraged RBICs.

§§ 4290.3046–4290.3049 [Reserved]

§ 4290.3050 Operational Assistance Grants for RBICs.

Subpart N, Requirements for Operational Assistance Grant to RBICs, of this part does not apply to Non-leveraged RBICs. All other references to Operational Assistance in this part do not apply to Non-leveraged RBICs.

§§ 4290.3051–4290.3099 [Reserved]

Dated: December 15, 2011.

Dallas Tonsager,

Under Secretary, Rural Development.

Dated: December 15, 2011.

Bruce Nelson,

Administrator, Farm Service Agency.

[FR Doc. 2011–32570 Filed 12–22–11; 8:45 am]

BILLING CODE 3410–XY–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Technical Amendments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending the section of its regulations addressing the low-income designation to make minor, nonsubstantive technical corrections. The technical amendments update the regulation to reflect current agency practice and will not cause any substantive changes.

DATES: This rule is effective December 23, 2011.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background
II. Regulatory Changes
III. Regulatory Procedures

I. Background [1]

A. Why is NCUA adopting this rule?

NCUA continually reviews its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2, Developing and Reviewing Government Regulations. Recently, NCUA internally reviewed its regulations and determined minor revisions to section 701.34 are necessary to reflect current agency practice.

[1] President Obama signed the Plain Writing Act of 2010 (Pub. L. 111–274) into law on October 13, 2010 ''to improve the effectiveness and accountability of federal agencies to the public by promoting clear Government communication that the public can understand and use.'' This preamble is written to meet plain writing objectives.

B. What changes does the final rule make?

The final rule amends section 701.34 of NCUA's regulations to make minor technical corrections. The corrections are necessary to update and conform the regulation to current agency practice. Specifically, the NCUA Board has delegated its authority for designations of low-income status to the Office of Consumer Protection. This authority previously sat with the regional directors. The final rule amends section 701.34 to remove references to ''regional directors,'' and to replace those references with ''NCUA''.

II. Regulatory Changes

This rule provides minor technical corrections and will not cause any substantive changes.

III. Regulatory Procedures

Final Rule Under the Administrative Procedure Act

NCUA is issuing this rulemaking as a final rule, effective upon publication. Generally, the Administrative Procedure Act (APA) requires a rulemaking to be published as a notice of proposed rulemaking with the opportunity for public comment, unless the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553. NCUA believes good cause exists for issuing these amendments without notice and public comment. The amendments in this rule are not substantive but merely technical in that they make minor corrections to update the regulations and conform them to current agency practice.

Additionally, the APA requires that a final rule must have a delayed effective date of 30 days from the date of publication, except for good cause. 5 U.S.C. 553(d). NCUA also finds good cause to waive the customary 30-day delayed effective date requirement under the APA. 5 U.S.C. 553(d)(3). Again the technical change conforms the rule to current agency practice. The rule will, therefore, be effective immediately upon publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those credit unions under ten million dollars in assets). This rule does not impose any regulatory burden. It merely makes non-substantive technical changes to section 701.34 of NCUA's regulations. This rule will not have a significant economic impact on a substantial number of small credit unions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

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 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. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. Based on similar technical changes to the NCUA regulations, we believe the Office of Management and Budget will determine that this rule is not a major rule for purposes of SBREFA. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so this rule may be reviewed.

List of Subjects in 12 CFR Part 701

Advertising, Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Signs and symbols, Surety bonds.

By the National Credit Union Administration Board on December 8, 2011.

Mary Rupp,

Secretary of the Board.

For the reasons discussed above, NCUA amends 12 CFR part 701 of title 12, chapter VII, of the Code of Federal Regulations as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation 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. 1601, *et seq.;* 42 U.S.C. 1981 and 3601–3610, Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.34 [Amended]

■ 2. Section 701.34 is amended by:

■ a. Removing the words ''the regional director'' wherever they appear and adding in their place the word ''NCUA''.

■ b. Removing the words ''a regional director'' or ''A regional director'' wherever they appear and adding in their place the word ''NCUA''.

■ c. Removing the words ''the appropriate Regional Director'' wherever they appear and adding in their place the word ''NCUA''.

■ d. Removing the words ''the appropriate regional director'' wherever they appear and adding in their place the word ''NCUA''.

■ e. Removing the words ''the appropriate regional director's'' wherever they appear and adding in their place the word ''NCUA's''.

■ f. Removing the words ''the appropriate NCUA Regional Director'' wherever they appear and adding in their place the word ''NCUA''.

[FR Doc. 2011–32886 Filed 12–22–11; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0904; Directorate Identifier 2010–NE–33–AD; Amendment 39–16902; AD 2011–27–01]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Turbomeca Arriel 1B turboshaft engines. This AD results from 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 an increase in hot gas ingestion and an increase of temperature in the gas generator (GG) turbine rotor, potentially resulting in turbine damage and an uncommanded in-flight shutdown. We are issuing this AD to prevent over-temperature damage of the GG turbine, which could result in an uncommanded in-flight engine shutdown, and a subsequent forced autorotation landing or accident.

DATES: This AD becomes effective January 27, 2012.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7772; fax: (781) 238–7199; email: *rose.len@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 the specified products. That NPRM was published in the **Federal Register** on August 31, 2011 (76 FR 54143). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During quality inspections in repair centre some 2nd stage Nozzle Guide Vanes (NGVs) to be installed on Pre TU 148 standard Arriel 1B were found not conforming to the definition. The affected parts had been repaired and were found drilled on the rear flange instead of the front flange. This configuration corresponds to 2nd stage Turbine NGVs to be installed on post-TU 148 standard Arriel 1B engines. This non compliance may only be found on post-TU 76 standard 2nd stage Turbine NGVs (i.e. with flexible hub).

This non compliance would increase hot gas ingestion and generate an increase of temperature in the Gas Generator (GG) turbine rotor, potentially resulting in turbine damage and an uncommanded in-flight shutdown.

The corrective action includes daily checks for evidence of turbine damage, and removal of the engine from service before further flight if turbine damage is found. The corrective action also includes inspecting the configuration of the holes in the repaired 2nd stage turbine NGV. If the holes are non-conforming, then before further flight replacement of the 2nd stage turbine NGV, 1st stage turbine disc, and 2nd stage turbine disc, with discs eligible for installation, is required. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

Based on the service information, we estimate that this AD affects about 20 Turbomeca Arriel 1B turboshaft engines installed on helicopters of U.S. registry. We estimate that it will take about 40 work-hours per engine to inspect a repaired 2nd stage turbine NGV for the non-conforming hole configuration. We also estimate that it will take about 60 work-hours to replace the NGV, the 1st stage turbine disc, and the 2nd stage turbine disc, and that one engine will require these replacements. The average labor rate is $85 per work-hour. Required parts cost about $19,889 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $92,989. Our cost estimate is exclusive of possible warranty coverage.

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); and

3. 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 a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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 regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: (800) 647–5527) is provided 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 adding the following new AD:

2011–27–01 Turbomeca: Amendment 39–16902; Docket No. FAA–2010–0904; Directorate Identifier 2010–NE–33–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 27, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Turbomeca Arriel 1B turboshaft engines with M03 modules modified by TU 76 or TU 202, and not modified by TU 148, and if fitted with a repaired 2nd stage turbine nozzle guide vane (NGV). The M03 module contains the 2nd stage turbine NGV, 1st stage turbine disc, and 2nd stage turbine disc. Guidance on determining if an engine has an unrepaired 2nd stage turbine NGV installed can be found in paragraph 1.C. of Turbomeca Mandatory Service Bulletin (MSB) No. A292 72 0829, Version B, dated December 13, 2010.

(d) Reason

This AD was prompted by an increase in hot gas ingestion and an increase of temperature in the gas generator (GG) turbine rotor, potentially resulting in turbine damage and an uncommanded in-flight shutdown. We are issuing this AD to prevent over-temperature damage of the GG turbine, which could result in an uncommanded in-flight engine shutdown, and a subsequent forced autorotation landing or accident.

(e) Compliance

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

(f) Daily Checks

(1) Starting from the effective date of this AD, perform a daily check (after last flight of the day) for:

(i) Normal rundown time of the GG rotor; and

(ii) The free rotation of the GG rotor; and

(iii) No grinding noise during the rundown check, and during the free rotation check of the GG rotor.

(2) Guidance on performing the daily checks can be found in the Maintenance Manual, task 71–02–09–760–801 and task 05–20–01–200–801.

(3) If the engine fails any of these daily checks, remove the engine from service before further flight.

(g) Inspection of Repaired 2nd Stage Turbine NGVs

(1) Inspect the 2nd stage turbine NGV for a non-conforming hole configuration, at the compliance times in Table 1 of this AD. Guidance on 2nd stage turbine NGV non-conforming hole configuration can be found in Turbomeca MSB No. A292 72 0829, Version B, dated December 13, 2010.

TABLE 1—INSPECTION COMPLIANCE TIMES

If accumulated GG Cycles-in-Service (CIS) on the effective date of this AD are:	Then inspect:
(i) Fewer than 1,200 CIS on both the 1st and 2nd stage turbines	Before exceeding 1,500 GG CIS.
(ii) 1,200 or more but fewer than 1,800 CIS on either the 1st or 2nd stage turbines.	Before exceeding 300 GG CIS after the effective date of this AD but not to exceed 2,000 CIS on either the 1st or 2nd stage turbines.
(iii) 1,800 or more but fewer than 2,400 CIS on either the 1st or 2nd stage turbine.	Before exceeding 200 GG CIS after the effective date of this AD but not to exceed 2,500 CIS on either the 1st or 2nd stage turbines.
(iv) Greater than 2,400 CIS on either the 1st or 2nd stage turbine	Before exceeding 100 GG CIS after the effective date of this AD but not to exceed 3,000 CIS on either the 1st or 2nd stage turbine.

(2) If the configuration of the holes in the repaired 2nd stage turbine NGV are conforming, then no further action is required.

(3) If the configuration of the holes in the repaired 2nd stage turbine NGV are non-conforming, then before further flight:

(i) Replace the 2nd stage turbine NGV with a 2nd stage turbine NGV eligible for installation; and

(ii) Replace the 1st stage turbine disc and 2nd stage turbine disc with discs eligible for installation.

(h) Terminating Action

Complying with paragraph (g)(1) and either paragraph (g)(2) or paragraphs (g)(3)(i) through (g)(3)(ii) of this AD, or replacing the M03 module with an M03 module that is eligible for installation, is terminating action for the requirements of this AD.

(i) Installation Prohibition

(1) Do not reinstall the 1st stage turbine disc and the 2nd stage turbine disc removed in paragraph (g)(3)(ii) of this AD into any engine.

(2) After the effective date of this AD, do not install an M03 module that has incorporated TU 202 but not incorporated TU 148, unless the module is in compliance with the requirements of this AD.

(3) After the effective date of this AD, do not install an M03 module that has incorporated TU 76 but not incorporated TU 148, unless the module is in compliance with the requirements of this AD.

(j) FAA AD Differences

(1) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) and/or service information as follows:

(i) This AD does not require sending data to Turbomeca to confirm whether Turbomeca MSB No. A292 72 0829, Version B, dated December 13, 2010, is applicable to the operator's engine; the MCAI does.

(ii) This AD does not incorporate by reference (IBR) Turbomeca MSB No. A292 72 0829, Version B, dated December 13, 2010; the MCAI does.

(iii) This AD requires replacing non-conforming 2nd stage turbine NGVs and 1st stage and 2nd stage turbine discs that were operated with non-conforming 2nd stage turbine NGVs but does not require replacing affected M03 modules. The MCAI requires replacing affected M03 modules with M03 modules eligible for installation.

(k) Definition

For the purpose of this AD, a conforming repaired 2nd stage turbine NGV is one with cooling holes in the forward inner flange, and with no cooling holes in the rear flange.

(l) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(m) Related Information

(1) Refer to European Aviation Safety Agency AD 2010–0273R1, dated February 16, 2011, and Turbomeca MSB No. A292 72 0829, Version B, dated December 13, 2010, for related information. Contact Turbomeca, 40220 Tarnos, France; phone: 33 05 59 74 40 00; fax: 33 05 59 74 45 15; for a copy of this service information.

(2) Contact Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7772; fax: (781) 238–7199; email: *rose.len@faa.gov,* for more information about this AD.

(n) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on December 16, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–32890 Filed 12–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1328; Airspace Docket No. 10–AEA–26]

Amendment of Class D and E Airspace; Baltimore, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects the geographic coordinates in the airspace description of a final rule published in the **Federal Register** of November 28, 2011, amending controlled airspace at Martin State Airport, Baltimore, MD.

DATES: Effective date: 0901 UTC. February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On November 28, 2011, the FAA published a final rule in the **Federal Register** amending Class D and E airspace at Martin State Airport, Baltimore, MD, and adjusting the geographic coordinates for the airport (76 FR 72837). This action further corrects the geographic coordinates to be in concert with the FAAs aeronautical database.

The Class D and E airspace designations are published in Paragraphs 5000, 6002 and 6004 of FAA order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates listed in the airspace designation for the Class D and Class E airspace areas at Martin State Airport, Baltimore, MD, as published in the **Federal Register** of November 28, 2011, 76 FR 72837, FR Doc. 2011–30489, are corrected as follows:

AEA MD D Baltimore, Martin State Airport, MD [Corrected]

Martin State Airport, Baltimore, MD

On page 72837, column 3, line 53, remove (Lat. 39°19′54″ N., long. 76°24′83″ W.) and insert (Lat. 39°19′32″ N., long. 76°24′50″ W.)

AEA MD E2 Baltimore, Martin State Airport, MD [Corrected]

Martin State Airport, MD

On page 72838, column 1, line 14, remove (Lat. 39°19′54″ N., long. 76°24′83″ W.) and insert (Lat. 39°19′32″ N., long. 76°24′50″ W.)

AEA MD E4 Baltimore, Martin State Airport, MD [Corrected]

Martin State Airport, MD

On page 72838, column 1, line 38, remove (Lat. 39°19′54″ N., long. 76°24′83″ W.) and insert (Lat. 39°19′32″ N., long. 76°24′50″ W.)

Issued in College Park, Georgia, on December 13, 2011.

Michael Vermuth,

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

[FR Doc. 2011–32847 Filed 12–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1057; Airspace Docket No. 11–AEA–21]

Amendment of Class E Airspace; Huntington, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Huntington, WV, as the Huntt Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Tri-State/Milton J. Ferguson Field Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also updates the airport's geographic coordinates of the airport.

DATES: Effective 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On October 18, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Huntington, WV (76 FR 64295) Docket No. FAA–2011–1057. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found that the geographic coordinates needed to be adjusted. This action makes that adjustment. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface at Huntington, WV to accommodate the new Standard Instrument Approach Procedures developed for Tri-State/Milton J. Ferguson Field Airport. The Huntt NDB has been decommissioned, and the NDB approach cancelled. The existing Class E airspace extending upward from 700 feet above the surface is modified for the safety and management of IFR operations. This action also updates the geographic coordinates to be in concert with the FAAs aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative

comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Tri-State/Milton J. Ferguson Field Airport, Huntington, WV.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA WV E5 Huntington, WV [Amended]

Tri-State/Milton J. Ferguson Field Airport, Huntington, WV
(Lat. 38°22′01″ N., long. 82°33′31″ W.)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of the Tri-State/Milton J Ferguson Field Airport.

Issued in College Park, Georgia, on December 13, 2011.

Michael Vermuth,

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

[FR Doc. 2011–32803 Filed 12–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0347; Airspace Docket No. 11–ASO–11]

Establishment of Class D and E Airspace and Amendment of Class E; Punta Gorda, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and E airspace and amends existing Class E airspace at Punta Gorda, FL, to accommodate a new air traffic control tower at Punta Gorda Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations for standard instrument approach procedures at the airport. This action also changes the airport name and makes a minor adjustment to the geographic coordinates of the airport.

DATES: Effective 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On September 26, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class D and E airspace and amend existing Class E airspace at Punta Gorda, FL, to accommodate a new air traffic control tower at Punta Gorda Airport (76 FR 59306). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in Paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class D and Class E surface airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of Punta Gorda Airport, Punta Gorda, FL. This action also establishes Class E surface airspace designated as an extension to Class D surface area. The existing Class E airspace area extending upward from 700 feet above the surface is amended to change the airport previously named Charlotte County Airport to Punta Gorda Airport, and adjusts the geographic coordinates to be in concert with the FAA's aeronautical database. Additional controlled airspace is necessary to support the new air traffic control tower and new standard instrument approach procedures developed for continued safety and management of IFR operations at Punta Gorda Airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the

authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Punta Gorda, FL [NEW]

Punta Gorda Airport, FL
(Lat. 26°55′08″ N., long. 81°59′27″ W.)

That airspace extending upward from the surface up to and including 2,500 feet MSL within a 4.5-miles radius of the Punta Gorda Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ASO FL E2 Punta Gorda, FL [New]

Punta Gorda Airport, FL
(Lat. 26°55′08″ N., long. 81°59′27″ W.)

That airspace extending from the surface within a 4.5-mile radius of Punta Gorda Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace areas designated as an extension to a class D surface area.

* * * * *

ASO FL E4 Punta Gorda, FL [NEW]

Punta Gorda Airport, FL
(Lat. 26°55′08″ N., long. 81°59′27″ W.)

That airspace extending from the surface 2.4 miles either side of the 036° bearing from Punta Gorda Airport extending from the 4.5-mile radius to 7.0 miles northeast of the airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ASO FL E5 Punta Gorda, FL [Amended]

Punta Gorda Airport, FL
(Lat. 26°55′08″ N., long. 81°59′27″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Punta Gorda Airport.

Issued in College Park, Georgia, on December 13, 2011.

Michael Vermuth,

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

[FR Doc. 2011–32849 Filed 12–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0744; Airspace Docket No. 11–ASO–33]

Establishment of Class E Airspace; Oneonta, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: Effective 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On September 22, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace at Oneonta, AL (76 FR 58728) Docket No. FAA–2011–0744. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found a typographical error in the longitude coordinates of the airport. This action makes the correction. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface at Oneonta, AL, to provide the controlled airspace required to accommodate the new RNAV GPS Standard Instrument Approach Procedures developed for Robbins Field. This action is necessary for the safety and management of IFR operations at the airport. Also, the coordinates of the airport are corrected to be in concert with the FAAs aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a

''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Robbins Field, Oneonta, AL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO AL E5 Oneonta, AL [New]

Robbins Field, AL

(Lat. 33°58′17″ N., long. 86°22′49″ W.)

That airspace extending upward from 700 feet above the surface within an 8.5- mile radius of Robbins Field.

Issued in College Park, Georgia, on December 13, 2011.

Michael Vermuth,

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

[FR Doc. 2011–32854 Filed 12–22–11; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter 1

Amendment to July 14, 2011 Order for Swap Regulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: On October 25, 2011, the Commodity Futures Trading Commission (''CFTC'' or the ''Commission'') published in the **Federal Register** a Notice of Proposed Amendment (''Notice'') to extend the temporary exemptive relief the Commission granted on July 14, 2011 (''July 14 Order'') from certain provisions of the Commodity Exchange Act (''CEA'') that otherwise would have taken effect on the general effective date of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''the Dodd-Frank Act'')—July 16, 2011. This final order extends the July 14 Order with certain modifications. Specifically, it extends the potential latest expiration date of the July 14 Order from December 31, 2011 to July 16, 2012; and adds provisions to account for the repeal and replacement (as of December 31, 2011) of part 35 of the Commission's regulations.

DATES: This final order will be effective on December 23, 2011.

FOR FURTHER INFORMATION CONTACT: Mark D. Higgins, Counsel, (202) 418–5864, *mhiggins@cftc.gov,* Office of the General Counsel; Jocelyn Partridge, Special Counsel, (202) 418–5926, *jpartridge@cftc.gov,* Division of Clearing and Risk; Ryne Miller, Attorney Advisor, (202) 418–5921, *rmiller@cftc.gov,* Division of Market Oversight; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act into law.[1] Title VII of the Dodd-Frank Act amends the CEA [2] to establish a comprehensive new regulatory framework for swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the rulemaking and enforcement authorities of the Commission with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.[3]

Section 754 of the Dodd-Frank Act states that, unless otherwise provided, the provisions of subtitle A of title VII of the Dodd-Frank Act [4] ''shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle.'' Thus, the general effective date for provisions of title VII that do not require a rulemaking was July 16, 2011. This includes the provisions that repealed several provisions of the CEA as in effect prior to the Dodd-Frank Act that excluded or exempted, in whole or in part, certain transactions from Commission oversight.[5]

Section 712(d)(1) of the Dodd-Frank Act requires the Commission and the SEC to undertake a joint rulemaking to ''further define'' certain terms used in title VII, including the terms ''swap,'' ''swap dealer,'' ''major swap participant,'' and ''eligible contract participant.'' [6] Section 721(c) requires

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 1 *et seq.*

[3] Title VII also includes amendments to the federal securities laws to establish a similar regulatory framework for security-based swaps under the authority of the Securities and Exchange Commission (''SEC'').

[4] All of the amendments to the CEA in title VII are contained in subtitle A. Accordingly, for convenience, references to ''title VII'' in this Notice shall refer only to subtitle A of title VII.

[5] These exclusions and exemptions were contained in former CEA sections 2(d), 2(e), 2(g), 2(h), and 5d, 7 U.S.C. 2(d), 2(e), 2(g), 2(h), and 7a–3.

[6] Section 712(d)(1) provides: ''Notwithstanding any other provision of this title and subsections (b)

Continued

the Commission to adopt a rule to ''further define'' the terms ''swap,'' ''swap dealer,'' ''major swap participant,'' and ''eligible contract participant'' to prevent evasion of statutory and regulatory obligations.[7] The Commission and the SEC have jointly issued two notices of proposed rulemaking that address these further definitions.[8]

The Commission's final rulemakings further defining the terms in sections 712(d) and 721(c) were not expected to be in effect as of July 16, 2011 (*i.e.,* the general effective date set forth in section 754 of the Dodd-Frank Act). Accordingly, on July 14, 2011 the Commission exercised its exemptive authority under CEA section 4(c)[9] and its authority under section 712(f) of the Dodd-Frank Act by issuing the July 14 Order.[10] In so doing, the Commission sought to address concerns that had been raised about the applicability of various regulatory requirements to certain agreements, contracts, and transactions after July 16, 2011, and thereby ensure that current practices will not be unduly disrupted during the transition to the new regulatory regime.[11]

II. Description of Relief Provided in July 14 Order

The July 14 Order groups the relevant provisions of the Dodd-Frank Act into four categories and provides temporary exemptive relief, set to expire no later than December 31, 2011, with respect to Categories 2 and 3. A summary of the four categories of provisions follows.

Category 1 covers statutory provisions which by their express terms require a rulemaking. Because, under section 754 of the Dodd-Frank Act, these provisions do not become effective until at least 60 days after the final rule is published, no exemptive relief from the general effective date is necessary. Category 1 provisions include, among others, the further definitions of terms regarding swap entities or instruments as required by the Dodd-Frank Act (such as the terms ''swap,'' ''swap dealer,'' ''major swap participant,'' or ''eligible contract participant''). Category 1 also includes, among others: (1) Registration, capital and margin requirements, and business conduct standards for swap dealers and major swap participants; (2) provisions prohibiting agricultural swaps except pursuant to CFTC rules; (3) rules regarding swap execution facilities; and (4) various swap data recordkeeping and reporting requirements. A complete list of the Category 1 provisions is included in the appendix to the July 14 Order.

The first part of the relief provided for in the July 14 Order reaches those Dodd-Frank Act provisions (''Category 2 provisions'') that are self-effectuating (*i.e.,* do not require a rulemaking) and that reference one or more of the terms for which the Commission and SEC are required to provide further definition, including ''swap,'' ''swap dealer,'' ''major swap participant,'' ''eligible contract participant,'' and ''security-based swap agreement'' (collectively, the ''referenced terms''). These Category 2 provisions include, for example, the trade execution requirement of CEA section 2(h)(8), as amended by Dodd-Frank Act section 723. A complete list of the Category 2 provisions is included in the appendix to the July 14 Order. Because the Category 2 provisions would have taken effect on July 16, 2011 pursuant to section 754, the Commission granted temporary relief from those provisions, but only to the extent that the requirements in such provisions specifically relate to a referenced term that is not yet further defined. Thus, if a Category 2 provision also applies to futures or options on futures, the provision took effect on July 16 with respect to futures or options on futures. The exemption for Category 2 provisions expires on the earlier of: (1) The effective date of the applicable final rule further defining the relevant term; or (2) December 31, 2011.

In part two of the July 14 Order, the Commission provides temporary exemptive relief from the provisions of the CEA that may apply to certain agreements, contracts, and transactions in exempt or excluded commodities (generally, financial, energy and metals commodities) as a result of the repeal of the CEA exemptions and exclusions in former CEA sections 2(d), 2(e), 2(g), 2(h), and 5d as of July 16, 2011 pursuant to sections 723(a)(1) and 734(a) of the Dodd-Frank Act (the ''Category 3 provisions''). As explained in the July 14 Order, this relief is based on the Commission's existing ''part 35'' exemptive rules.[12]

Part 35 originally was promulgated in 1993 pursuant to, among others, the Commission's general exemptive authority in CEA section 4(c) and its plenary options authority under section 4c(b),[13] and provides a broad-based exemption from the CEA for ''swap agreements'' in any commodity. Specifically, part 35 exempts ''swap agreements,'' as defined therein, from most of the provisions of the CEA if: (1) They are entered into by ''eligible swap participants'' (''ESPs'');[14] (2) they are not part of a fungible class of agreements standardized as to their material economic terms; (3) the creditworthiness of any party having an actual or potential obligation under the swap agreement would be a material

and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors [of the Federal Reserve System], shall further define the terms 'swap', 'security-based swap', 'swap dealer', 'security-based swap dealer', 'major swap participant', 'major security-based swap participant', and 'security-based swap agreement' in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78))."

[7] Section 721(c) provides: ''To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms 'swap', 'swap dealer', 'major swap participant', and 'eligible contract participant'.''

[8] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 75 FR 80174, Dec. 21, 2010 and Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 FR 29818, May 23, 2011.

[9] 7 U.S.C. 6(c).

[10] Effective Date for Swap Regulation, 76 FR 42508 (issued and made effective by the Commission on July 14, 2011; published in the **Federal Register** on July 19, 2011). Section 712(f) of the Dodd-Frank Act states that ''in order to prepare for the effective dates of the provisions of this Act,'' including the general effective date set forth in section 754, the Commission may ''exempt persons, agreements, contracts, or transactions from provisions of this Act, under the terms contained in this Act.'' Section 754 specifies that unless otherwise provided in Title VII, provisions requiring a rulemaking become effective ''not less than 60 days after publication of the final rule'' (but not before July 16, 2011).

[11] Concurrent with the July 14 Order, the Commission's Division of Clearing and Intermediary Oversight and the Division of Market Oversight (together ''the Divisions'') identified certain provisions of the Dodd-Frank Act and CEA as amended that would take effect on July 16, 2011, but that may not be eligible for the exemptive relief provided by the Commission in its July 14 Order—specifically, the amendments made to the CEA by Dodd-Frank Act sections 724(c), 725(a), and 731. On July 14, 2011, the Divisions issued Staff No-Action Relief addressing the application of these provisions after July 16, 2011. The Commission staff has informed the Commission that it is separately considering whether to issue a no-action letter in which the staff would state that it would not recommend that the Commission commence an enforcement action against markets or market participants for failure to comply with the above-referenced provisions over a period of time co-extensive with that set forth in this final order.

[12] 76 FR at 42514. The July 14 Order did not extend to agreements, contracts, or transactions that fully met the conditions of part 35, since in such circumstances further relief was unnecessary.

[13] 7 U.S.C. 6c(b).

[14] As noted in the July 14 Order, the parties covered under the ESP definition, while very broad, are not coextensive with those covered by the terms ''eligible commercial entity'' or ''eligible contract participant.'' Therefore, it is possible that a small segment of persons or entities that are currently relying on one or more of the CEA exclusions or exemptions cited above might not qualify as an ESP and consequently would not be eligible for part 35. 76 FR at 42511, n. 40.

consideration in entering into or determining the terms of the swap agreement, including pricing, cost, or credit enhancement terms; and (4) they are not entered into or traded on a multilateral transaction execution facility.

Under part two of the relief provided for in the July 14 Order, the Commission stated that transactions in exempt or excluded commodities (and persons offering, entering into, or rendering advice or rendering other services with respect to such transactions) are temporarily exempt from provisions of the CEA that may apply to such transactions if such transactions comply with part 35, notwithstanding that: (1) The transaction may be executed on a multilateral transaction execution facility; (2) the transaction may be cleared; (3) persons offering or entering into the transaction may be eligible contract participants as defined in the CEA (prior to the enactment of the Dodd-Frank Act); (4) the transaction may be part of a fungible class of agreements that are standardized as to their material economic terms; and/or (5) no more than one of the parties to the transaction is entering into the transaction in conjunction with its line of business, but is neither an eligible contract participant nor an ESP, and the transaction was not and is not marketed to the public.[15]

Thus, for certain transactions, the July 14 Order provides relief notwithstanding that the transaction may not satisfy certain part 35 requirements (*e.g.,* cleared, executed on a multilateral trade execution facility, entered into by certain persons that are not eligible contract participants, etc.). The Commission stated in the July 14 Order that this relief is limited to transactions in exempt and excluded commodities, and does not extend to transactions in agricultural commodities, because transactions in agricultural commodities were not covered by the applicable statutory exclusions and exemptions in effect prior to July 16, 2011.[16] The exemption in part two of the July 14 Order expires on the earlier of: (1) The repeal, withdrawal or replacement of part 35; or (2) December 31, 2011.

Category 4 contains those Dodd-Frank Act provisions for which the Commission determined not to issue relief, and which therefore went into effect on July 16, 2011. A complete list of the Category 4 provisions is included in the appendix to the July 14 Order.

The temporary exemptions issued in the July 14 Order are subject to several conditions. These conditions provide that the July 14 Order shall not: (1) Limit in any way the Commission's anti-fraud or anti-manipulation authority under the CEA; (2) apply to any provision of the Dodd-Frank Act or the CEA that became effective prior to July 16, 2011; (3) affect any effective date or compliance date set forth in any rulemaking issued by the Commission to implement provisions of the Dodd-Frank Act; (4) limit the Commission's authority under Dodd-Frank Act section 712(f) to issue rules, orders, or exemptions prior to the effective date of any provision of the Dodd-Frank Act and the CEA, in order to prepare for such effective date; and (5) affect the applicability of any provision of the CEA to futures contracts or options on futures contracts, or to cash markets.[17]

III. Discussion of the Proposed Amendments to the July 14 Order

On October 25, 2011, the Commission published in the **Federal Register** a Notice to amend the July 14 Order in two ways.[18] First, the Commission proposed to amend the July 14 Order to extend the potential latest expiry dates. With respect to provisions covered in the first part of the relief in the July 14 Order, the Commission proposed that the temporary exemptive relief expire upon the earlier of: (1) The effective date of the applicable final rule further defining the relevant referenced term; or (2) July 16, 2012.[19] This proposed amendment addressed the potential that, as of December 31, 2011, the CFTC–SEC joint rulemakings ''further defining'' the referenced terms will not yet be effective. The Commission also proposed to amend the July 14 Order to extend the expiry date of the second part of the relief in the July 14 Order until the earlier of: (1) July 16, 2012; or (2) such other compliance date as may be determined by the Commission. For the same reason stated by the Commission in issuing the second part of the relief provided in the July 14 Order, the Commission proposed extending this exemptive relief to ''allow markets and market participants to continue to operate under the regulatory regime as in effect prior to July 16, 2011, but subject to various implementing regulations that the Commission promulgates and applies to the subject transactions, market participants, or markets.'' [20]

Second, the Commission proposed to include within the second part of the relief any agreement, contract or transaction that fully meets the conditions in part 35 as in effect prior to December 31, 2011. This proposed amendment addressed the fact that such transactions, which were not included within the scope of the July 14 Order because the exemptive rules in part 35 covered them at that time, now require temporary relief because part 35 will no longer be available as of December 31, 2011.[21] Accordingly, to ensure that the exemptive relief currently available for these transactions continues to be available after December 31, 2011, the Commission proposed to amend the July 14 Order to incorporate by reference the part 35 relief available prior to December 31, 2011. Whereas the relief provided in part two of the July 14 Order was (and would remain) limited to transactions in excluded or exempt

[15] 76 FR at 42514. With respect to commodity options, the Commission clarified that options identified in the swap agreement definition in paragraph (b)(1)(i) of § 35.1 of the Commission's regulations and any options captured by the concluding catch-all language in that paragraph, as well as any options described in paragraphs (b)(1)(ii) and/or (iii) of § 35.1, involving excluded or exempt commodities are within the scope of the July 14 Order. 76 FR at 42514–15.

[16] The Commission also stated, though, that because part 35 remained in effect at the time of the July 14 Order, market participants could continue to rely on part 35 with respect to swaps (other than commodity options) on enumerated agricultural commodities as defined in CEA section 1a(4) or § 32.2 of the Commission's regulations, as well as swaps and commodity options on non-enumerated agricultural commodities, to the extent these transactions fully comply with part 35. Under the July 14 Order, market participants also may continue to rely on part 32 for options on enumerated agricultural commodities to the extent these transactions are conducted in accordance with § 32.13(g) of the Commission's regulations. Rule 32.13(g) permits off-exchange options offered to producers, processors, commercial users or merchants of the commodity or its products or by-products that have a net worth of at least $10 million, provided the offeree also has a net worth of at least $10 million.

[17] 76 FR at 42522.

[18] Effective Date for Swap Regulation, 76 FR 65999, Oct. 25, 2011.

[19] The date of July 16, 2012, is consistent with the potential transitional period provided in section 723(c) of the Dodd-Frank Act regarding former CEA section 2(h) and section 734(c) of the Dodd-Frank Act regarding former CEA section 5d (*i.e.,* for ''not longer than a 1-year period'' following the general effective date of title VII).

[20] 76 FR at 42513.

[21] The Commission recently promulgated a rule pursuant to section 723(c)(3) of the Dodd-Frank Act, and CEA sections 4(c) and 4c(b), that, effective December 31, 2011, will repeal the existing part 35 relief and replace it with new § 35.1 of the Commission's regulations. *See* Agricultural Swaps, 76 FR 49291, Aug. 10, 2011. Rule 35.1 provides, in pertinent part, that ''agricultural swaps may be transacted subject to all provisions of the CEA, and any Commission rule, regulation or order thereunder, that is otherwise applicable to swaps. [It] also clarifies that by issuing a rule allowing agricultural swaps to transact subject to the laws and rules applicable to all other swaps, the Commission is allowing agricultural swaps to transact on [designated contract markets (''DCMs''), swap execution facilities (''SEFs'')], or otherwise to the same extent that all other swaps are allowed to trade on DCMs, SEFs, or otherwise.'' *Id.* at 49296.

commodities, the proposed amendment also would include, beginning on January 1, 2012, transactions in agricultural commodities that fully meet the conditions in part 35 as in effect prior to December 31, 2011.[22] The Commission proposed that this further amendment to the July 14 Order is necessary to ensure that the same scope of the exemptive relief available before December 31, 2011 is available to all swaps and extends through July 16, 2012, at the latest.

In proposing these amendments, the Commission sought to ensure that current practices will not be unduly disrupted during the transition to the new regulatory regime. As stated above, the proposed July 16, 2012 date coincides with the potential transitional period provided in sections 723(c) and 734(c) of the Dodd-Frank Act.[23] Further, the Commission stated that, should the Commission deem it appropriate to terminate or extend any exemptive relief under part two of the July 14 Order, it would be in a better position to comprehensively evaluate and consider any tailored exemption at that time.

IV. Discussion of the Final Order

The Commission received five comments in response to the Notice proposing to amend the July 14 Order.[24] The comments generally focused upon three issues: (1) The general expiration date of the relief to be provided by the proposed amendment; (2) the application of the proposed amendment to agricultural swaps; and, (3) the expiry date applicable to exempt commercial markets (''ECMs'') operating pursuant to grandfather relief authorized by section 723(c)(l)–(2) of the Dodd-Frank Act and their market participants and clearing organizations. The comments and Commission determinations regarding each of these issues is discussed in the sections that follow. In addition, the final order includes other technical, non-substantive changes to the wording of the proposed amended order.

A. Expiry Date of July 16, 2012

1. Comments

Commenters were divided on whether the Commission should include an expiry or ''sunset'' date of July 16, 2012. For example, Better Markets stated that continuing to set outside dates for the exemptive relief, rather than granting open-ended exemptive relief, establishes important deadlines so that work can be prioritized and completed as quickly as prudently possible.[25] In contrast, CME Group and SIFMA recommended the Commission avoid setting a sunset provision date for the expiration of the temporary exemptive relief.[26] SIFMA stated that the Commission should instead provide exemptive relief that lasts on a provision-by-provision basis until related substantive requirements of the Dodd-Frank Act are implemented, as the SEC provided for in its parallel relief under subtitle B of title VII.[27] SIFMA said that avoiding the imposition of a sunset date would allow the Commission to adopt its final rules in a logical order that provides market participants with necessary legal certainty.[28]

2. Commission Determination

The Commission has determined to retain, as proposed, an outmost expiry date of July 16, 2012 for two reasons. First, the Commission continues to believe that it is appropriate and prudent to periodically review the extent and scope of any relief provided from the CEA, as amended by the Dodd-Frank Act.[29] The Commission anticipates that additional rulemakings to implement the Dodd-Frank Act will be completed during the extended period of exemptive relief between December 31, 2011 and July 16, 2012. During this period the Commission also will be considering the appropriate phase-in of the various regulatory requirements under the Dodd-Frank rulemakings. Accordingly, the Commission believes it appropriate to periodically re-examine the scope and extent of the proposed exemptive relief in order to ensure that the scope of relief is appropriately tailored to the schedule of implementation of the Dodd-Frank Act requirements. Second, particularly with respect to part two of the July 14 Order, the limitation of this extension of exemptive relief to no later than July 16, 2012 is consistent with the transitional relief provided by the Congress in section 723(c) of the Dodd-Frank Act regarding former CEA section 2(h) and section 734(c) of the Dodd-Frank Act regarding former CEA section 5d (*i.e.,* for ''not longer than a 1-year period'' following the general effective date of title VII).[30] As stated in the Notice, should the Commission deem it appropriate to terminate or extend any exemptive relief under part two of the July 14 Order, the Commission will be in a better position to comprehensively evaluate and consider any tailored exemption at that time.[31]

B. Application to Agricultural Swaps

1. Comments

CME sought clarification on the application of the proposed amendment to agricultural swaps.[32] CME stated that it was not clear from the Notice whether the proposed relief: (1) Would apply only to agricultural swaps that meet part 35 as in effect prior to December 31, 2011; or (2) includes agricultural swaps that meet part 35 as in effect prior to December 31, 2011 notwithstanding that: (i) The transaction may be executed on a multilateral transaction execution facility; (ii) the transaction may be cleared; (iii) persons offering or entering into the transaction may be eligible contract participants as defined in the CEA prior to July 16; (iv) the transaction may be part of a fungible class of agreements that are standardized as to their material economic terms; and/or (v) no more than one of the parties to the transaction is entering into the transaction in conjunction with its line of business, but is neither an eligible contract participant nor an ESP), and the transaction was not and is not marketed to the public. CME believes the latter is consistent with new Commission regulation § 35.1, and that the Commission should make this clear in

[22] The Commission also clarified that, by operation of new § 35.1 of the Commission's regulations, the Commission's statement in adopting the July 14 Order that a DCM may list and trade swaps ''under the DCM's rules related to futures contracts, without exemptive relief,'' 76 FR at 42518, would apply, as of December 31, 2011, to swaps in agricultural commodities.

[23] *See* Order Regarding the Treatment of Petitions Seeking Grandfather Relief for Exempt Commercial Markets and Exempt Boards of Trade, 75 FR 56513, Sept. 16, 2010.

[24] The Commission received comments from Better Markets, CME Group (CME); LCH.Clearnet Limited (LCH); Nodal Exchange LLC (Nodal Exchange or Nodal); and the Securities Industry and Financial Market Association (SIFMA). The comment file is available on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1102* (last visited Dec. 2, 2011).

[25] Better Markets at 2.

[26] CME at 2; SIFMA at 2.

[27] SIFMA at 2.

[28] SIFMA at 2–3. Although beyond the scope of the Notice, SIFMA also reiterated its request that the Commission provide a comprehensive rulemaking schedule and implementation plan, as well as clear positions on the extraterritorial scope of Title VII and treatment of inter-affiliate transactions, as set forth in its November 4 Letter on the Commission's proposed compliance and implementation schedules for clearing, trade execution, documentation and margin. SIFMA at 3.

[29] The Commission's position in this regard is unchanged from the first Effective Date for Swap Regulation proposal, 76 FR 35372, 35374, June 17, 2011.

[30] *See* Orders Regarding the Treatment of Petitions Seeking Grandfather Relief for Exempt Commercial Markets and Exempt Boards of Trade, 75 FR 56513, Sept. 16, 2010.

[31] 76 FR at 66002.

[32] CME at 2–3.

the text of any final order issued pursuant to the Notice.[33]

CME further stated that pursuant to the Notice and new regulation § 35.1, starting on January 1, 2012, swaps based on agricultural commodities, like swaps based on exempt and excluded commodities, may trade on either a DCM, ECM or exempt board of trade (''EBOT'') (until such time as status as a swap execution facility (''SEF'') is available). CME believes the Commission should make this clear in the text of any final order issued pursuant to the Notice.[34]

2. Commission Determination

Prior to the Dodd-Frank Act, the CEA did not permit transactions in agricultural commodities on ECMs or EBOTs.[35] Nothing in the Notice or the Commission's recently promulgated § 35.1[36] provide that agricultural swaps may trade on an ECM or EBOT. Rather, regulation § 35.1 allows agricultural swaps to transact subject to the laws and rules applicable to all other swaps, and to transact on DCMs, SEFs, ''or otherwise'' to the same extent that all other swaps are allowed to trade on DCMs, SEFs, ''or otherwise.'' [37] To interpret the phrase ''or otherwise'', in conjunction with the exemptive relief issued herein, as expanding the permissible role for ECMs and EBOTs to agricultural commodities would be: (1) Contrary to the plain language of the pre-Dodd-Frank exemptions for ECMs and EBOTs; and (2) inconsistent with the intent underlying the July 14 Order to preserve the status quo during implementation of the new swap regulatory regime.[38] Accordingly, the Commission now clarifies that new part 35 [39] and the exemptive relief issued herein, and any interaction of the two, do not operate to expand the pre-Dodd-Frank scope of transactions eligible to be transacted on either an ECM or EBOT to include transactions in agricultural commodities.

To clarify this point, and as compared to the proposed amended order, the Commission has reformatted this final order by moving the text addressing transactions that meet part 35 as in effect prior to December 31, 2011, to a paragraph separate from the text addressing transactions that meet part 35 as in effect prior to December 31, 2011 notwithstanding that: (i) The transaction may be executed on a multilateral transaction execution facility; (ii) the transaction may be cleared; (iii) persons offering or entering into the transaction may be eligible contract participants as defined in the CEA prior to July 16; (iv) the transaction may be part of a fungible class of agreements that are standardized as to their material economic terms; and/or (v) no more than one of the parties to the transaction is entering into the transaction in conjunction with its line of business, but is neither an eligible contract participant nor an ESP, and the transaction was not and is not marketed to the public.

C. Expiry Date Applicable to ECMs and EBOTs Operating Pursuant to Grandfather Relief Authorized by Section 723(c)(1)–(2) of the Dodd-Frank Act and Their Market Participants and Clearing Organizations

1. Comments

Two commenters, Nodal Exchange and LCH, expressed concern with the expiry date of the second part of the relief contained in the proposed amended order [40] as it applies to ECMs that have petitioned for the grandfather relief authorized by section 723(c)(1)–(2) of the Dodd-Frank Act [41] and/or to such ECMs' market participants or clearing organizations. As set forth above, the Commission proposed to amend the July 14 Order to extend the expiry date of the second part of the relief until the earlier of: (1) July 16, 2012; or (2) such other compliance date as may be determined by the Commission.

Nodal Exchange is an ECM that has filed for grandfather relief under the ECM ''Grandfather Order'' issued by the Commission pursuant to the authority provided by section 723(c)(1)–(2) of the Dodd-Frank Act.[42] The ECM Grandfather Order permits ECMs that satisfy specified conditions to continue to operate pursuant to the provisions of former CEA section 2(h)(3)–(7) until July 15, 2012. Among the applicable conditions are the requirements that the ECM must have filed a formal SEF or DCM application with the Commission within sixty days after the effective date of final regulations implementing the provisions of either section 733 or section 735 of the Dodd-Frank Act,[43] whichever is applicable, and that the ECM's SEF or DCM application be pending before the Commission.

Nodal Exchange requested that the proposed amended order be modified in two ways. First, Nodal requested that ''the Commission provide relief to ECMs compliant with the grandfathering provisions by extending the second part of the July 14 Order for these compliant ECMs until *the latter of* (1) July 16, 2012; or (2) such other compliance date as may be determined by the Commission.'' [44] In support of its request, Nodal stated that ''[s]ince the Dodd-Frank Act eliminates ECMs by no later than July 16, 2012, it would appear that Nodal Exchange must become a registered DCM or SEF by July 16, 2012.'' [45] Nodal asserted, however, that it ''appears highly unlikely that Nodal Exchange will be able to be either a registered DCM or SEF by July 16, 2012 because the rules for neither DCMs nor SEFs have been finalized'' and because ''based on the proposed rules for DCMs, the 180-day statutory review period will probably govern the application review process.'' [46]

Nodal claimed that its ''markets will be disrupted if Nodal Exchange cannot be registered as a DCM or SEF by July 16, 2012, unless Nodal Exchange can be permitted to continue to operate as an ECM until the Commission grants appropriate registration.'' [47] Nodal also claimed that ''[w]ithout further guidance from the Commission consistent with the ECM transition

[33] *Id.*

[34] CME at 3.

[35] Specifically, the statutory provisions authorizing ECMs (pre Dodd-Frank CEA section 2(h)) applied to transactions in exempt commodities, and the statutory provisions authorizing EBOTs (pre Dodd-Frank CEA section 5d) applied to transactions in excluded commodities. Agricultural commodities are neither exempt nor excluded commodities.

[36] *See* Agricultural Swaps, 76 FR 49291, Aug. 10, 2011.

[37] *Id.* at 49296.

[38] The Notice stated: ''[T]he proposed extension of this exemptive relief 'will allow markets and market participants to continue to operate under the regulatory regime as in effect prior to July 16, 2011 * * *'.'' 76 FR 65999, at 66001. The regulatory regime as in effect prior to July 16, 2011, did not permit transactions in agricultural commodities on ECMs or EBOTs.

[39] *See* footnote 36, above.

[40] As noted above, part two of the July 14 Order provides temporary exemptive relief from the provisions of the CEA that apply, or may apply, to certain agreements, contracts, and transactions in exempt or excluded commodities as a result of the repeal of the exemptions and exclusions contained in former CEA sections 2(d), 2(e), 2(g), 2(h), and 5d as of July 16, 2011. *See* sections 723(a)(1) and 734(a) of the Dodd-Frank Act.

[41] Section 723(c) of the Dodd-Frank Act permitted persons to submit to the Commission, within 60 days of the enactment of the Dodd-Frank Act, a petition to remain subject to former section 2(h) of the CEA and authorized the Commission to allow such persons to continue to operate subject to former section 2(h) of the CEA for not longer than a one year period.

[42] *See* Orders Regarding the Treatment of Petitions Seeking Grandfather Relief for Exempt Commercial Markets and Exempt Boards of Trade, 75 FR 56513, Sept. 16, 2010.

[43] Sections 733 and 735 of the Dodd-Frank Act include Core Principles and other statutory requirements applicable to SEFs and DCMs, respectively.

[44] Nodal at 2 (emphasis in the original).

[45] *Id.* at 1.

[46] *Id.* at 2.

[47] *Id.*

period of section 723(c) of the Dodd-Frank Act,'' the proposed amended order ''creates unnecessary uncertainty for Nodal Exchange, its participants, its clearing house LCH.Clearnet,[48] and the LCH.Clearnet clearing members for Nodal Exchange participants.'' [49]

Second, Nodal asserted that with respect to non-ECM entities such as Nodal Exchange participants and their LCH clearing members, extending the relief in the July 14 Order until the earlier of: (1) July 16, 2012; or (2) such other compliance date as may be determined by the Commission ''creates uncertainty in the timeline for compliance with the new regulatory regime,'' noting that it is ''unclear what circumstances could cause 'such other compliance date' to be determined by the Commission.'' [50] Accordingly, Nodal Exchange requested that the Commission provide exemptive relief to ''non-ECM market participants'' by extending the second part of the July 14 Order until July 16, 2012 without qualification.[51]

In a related comment, LCH similarly requested that the Commission extend the exemptive relief in the second part of the July 14 Order to July 16, 2012 ''without any qualification.'' [52] LCH.Clearnet Limited, one of the LCH's operating companies, is registered with the Commission as a derivatives clearing organization (''DCO'') and provides clearing services for Nodal Exchange. According to LCH, the second part of the Commission's July 14 Order permits LCH.Clearnet Limited to continue to clear transactions for Nodal Exchange.[53] LCH acknowledged that LCH.Clearnet's ''DCO designation must be amended before Nodal Exchange's change in registration [to a DCM or SEF] occurs.'' [54]

LCH commented that the Commission ''created unnecessary uncertainty for LCH.Clearnet Limited, Nodal, and LCH.Clearnet clearing members for firms trading on Nodal by proposing that the extension of the July 14 Order would expire 'upon the *earlier of:* (I) July 16, 2012; or (II) *such other compliance date as may be determined by the Commission.*' '' [55] Stating that ''no explanation for the 'other compliance date' language'' was provided, LCH maintained that the addition of this language ''raises the spectre that the Commission could rescind the exemptive relief at any time for any reason or without allowing sufficient time for LCH.Clearnet Limited to apply for and receive an amended order of registration.'' [56] LCH stated that extending the expiration date of the second part of the July 14 Order to July 16, 2012 without qualification would be ''consistent with the transitional period for ECMs provided in section 723(c) of Dodd-Frank'' and the Commission's goal of striving ''to ensure that current practices will not be unduly disrupted during the transition to the new regulatory regime.'' [57]

2. Commission Determination

Although these comments came from an ECM and its clearing organization, the points raised in these comments also are applicable to EBOTs that are operating under essentially the same Grandfather Order requirements as ECMs.[58] Accordingly, in modifying the proposed amended order to address the comments received regarding ECMs, the Commission also has determined to modify the proposed amended order to address EBOTs.

While the final order continues to provide that the exemption set forth in the second part of the order generally shall expire upon the earlier of July 16, 2012 or such other compliance date as may be determined by the Commission, it has been modified to provide that the exemption will not expire prior to July 16, 2012 in certain circumstances. Specifically, no other compliance date will be determined (and thus, the exemption will remain in effect until July 16, 2012) for agreements, contracts, and transactions (and for persons offering, entering into, or rendering advice or rendering other services with respect to, such agreements, contracts or transactions) that: (1) Are executed on an ECM or EBOT that is operating under the terms of the Commission's ECM/EBOT Grandfather Order and that complies with all of the applicable conditions of the ECM/EBOT Grandfather Order; and (2) are cleared by a Commission-registered DCO. This modification is narrow. It applies only to agreements, contracts, and transactions that are executed on a grandfathered ECM or EBOT and are cleared by a registered DCO, and it is restricted in scope to those specific requirements or provisions of the CEA (and relevant implementing regulations) that otherwise would apply to such agreements, contracts, and transactions and that are inconsistent with the ECM or EBOT Grandfather Order.[59]

As noted by the commenters, the Commission, in proposing the amendments to the July 14 Order, sought to ensure that current practices will not be unduly disrupted during the transition to the new regulatory regime.[60] The Commission also stated that it believes it is in the interest of the public and market participants to continue to provide regulatory certainty regarding the applicability of title VII of the Dodd-Frank Act.[61] The modification contained in the final order will further these objectives by providing greater consistency between the expiration of this exemptive relief and the terms of the ECM/EBOT Grandfather Order authorized by Congress in sections 723(c) and 734(c) of the Dodd-Frank Act. It also will reduce the likelihood of legal uncertainty that could arise were the exemptive relief applicable to grandfathered ECMs and EBOTs that execute particular transactions and the DCOs that clear those same transactions subject to disparate expiration dates. In this way, ECMs and EBOTs that are compliant with the conditions contained in the ECM/EBOT Grandfather Order, their market participants, and their DCOs and clearing members, are more likely to operate without disruption through the end of the grandfather relief period authorized by the Dodd-Frank Act—July 16, 2012.

The Commission, though, has determined not to modify the expiration date of the second part of the proposed amended order to permit the relief to expire later than July 16, 2012 for the same reasons that it has decided to retain a ''sunset'' or expiration provision generally. First, the Commission continues to believe that it is appropriate and prudent to periodically review the extent and scope of any exemptive relief provided from the CEA, as amended by the Dodd-Frank Act. Second, the limitation of this exemptive relief to no later than July 16, 2012 is consistent with the transitional relief provided by Congress (i.e., for ''not longer than a 1-year period''). Finally, should the Commission deem it

[48] Nodal represents that all of its contracts are cleared by LCH.Clearnet. *Id.* at 1, fn. 1.

[49] *Id.* at 2.

[50] *Id.*

[51] *Id.*

[52] LCH at 1.

[53] *Id.* at 2.

[54] *Id.*

[55] *Id.* (emphasis in the original).

[56] *Id.*

[57] *Id.*

[58] *See* Orders Regarding the Treatment of Petitions Seeking Grandfather Relief for Exempt Commercial Markets and Exempt Boards of Trade, 75 FR 56513, Sept. 16, 2010.

[59] This modification does not affect the applicability of general provisions applicable to DCOs or clearing requirements that the Commission may promulgate under the Dodd-Frank Act that may become effective before July 16, 2012. Such requirements would still apply to the DCO and transactions that are not executed on an ECM or EBOT.

[60] *See, e.g.,* 76 FR at 66002.

[61] *Id.*

appropriate to terminate or extend any exemptive relief under part two of the July 14 Order, the Commission will be in a better position to comprehensively evaluate and consider any tailored exemption at that time.[62]

V. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'')[63] imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA. These amendments to the July 14 Order will not require a new collection of information from any persons or entities that will be subject to the final order.

B. Cost-Benefit Considerations

Section 15(a) of the CEA[64] requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. CEA section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The Commission requested but received no comments on the consideration of costs and benefits of the proposed amendments discussed in the Notice. In the Notice, the Commission stated that the proposed amendments to the existing July 14 Order would not change the nature or limit the scope of relief granted.[65] The Commission continues to believe that these amendments do not change the nature or scope of the relief granted and, as such, impose no costs beyond the costs imposed by the July 14 Order. Rather, this final order confers an added benefit to market participants and the public by extending the relief provided for in the July 14 Order through no later than July 16, 2012. Accordingly, the consideration of costs and benefits set forth in the July 14 Order may be incorporated by reference in this final order.

VI. Amendments to the July 14 Order

The Commission amends the July 14 Order to read as follows:

The Commission, to provide for the orderly implementation of the requirements of Title VII of the Dodd-Frank Act, pursuant to sections 4(c) and 4c(b) of the CEA and section 712(f) of the Dodd-Frank Act, hereby issues this Order consistent with the determinations set forth above, which are incorporated in this final order, as amended, by reference, and:

(1) Exempts, subject to the conditions set forth in paragraph (4), all agreements, contracts, and transactions, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA, as added or amended by the Dodd-Frank Act, that reference one or more of the terms regarding entities or instruments subject to further definition under sections 712(d) and 721(c) of the Dodd-Frank Act, which provisions are listed in Category 2 of the Appendix to this Order; *provided, however,* that the foregoing exemption:

a. Applies only with respect to those requirements or portions of such provisions that specifically relate to such referenced terms; and

b. With respect to any such provision of the CEA, shall expire upon the earlier of: (i) the effective date of the applicable final rule further defining the relevant term referenced in the provision; or (ii) July 16, 2012.

(2) Exempts, subject to the conditions set forth in paragraph (4), all agreements, contracts, and transactions, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA, if the agreement, contract, or transaction complies with part 35 of the Commission's regulations as in effect prior to December 31, 2011. This exemption shall expire upon the earlier of (i) July 16, 2012; or (ii) such other compliance date as may be determined by the Commission.

(3) Exempts, subject to the conditions set forth in paragraph (4), all agreements, contracts, and transactions, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA, if the agreement, contract, or transaction complies with part 35 of the Commission's regulations as in effect prior to December 31, 2011, including any agreement, contract, or transaction in an exempt or excluded (but not agricultural) commodity that complies with such provisions then in effect notwithstanding that:

a. The agreement, contract, or transaction may be executed on a multilateral transaction execution facility;

b. The agreement, contract, or transaction may be cleared;

c. Persons offering or entering into the agreement, contract or transaction may not be eligible swap participants, provided that all parties are eligible contract participants as defined in the CEA prior to the date of enactment of the Dodd-Frank Act;

d. The agreement, contract, or transaction may be part of a fungible class of agreements that are standardized as to their material economic terms; and/or

e. No more than one of the parties to the agreement, contract, or transaction is entering into the agreement, contract, or transaction in conjunction with its line of business, but is neither an eligible contract participant nor an eligible swap participant, and the agreement, contract, or transaction was not and is not marketed to the public;

Provided, however, that:

a. Such agreements, contracts, and transactions in exempt or excluded commodities (and persons offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction) fall within the scope of any of the CEA sections 2(d), 2(e), 2(g), 2(h), and 5d provisions or the line of business provision as in effect prior to July 16, 2011; and

b. This exemption shall expire upon the earlier of: (i) July 16, 2012; or (ii) such other compliance date as may be determined by the Commission, except that the exemption shall not expire prior to July 16, 2012 with limited respect to the specific requirements or provisions of the CEA and regulations promulgated thereunder that otherwise would apply to such agreements, contracts, and transactions (and the persons offering, entering into, or rendering advice or rendering other services with respect to them) and that are inconsistent with the exempt commercial market (''ECM'')/exempt board of trade (''EBOT'') Grandfather Order if (I) such agreements, contracts, and transactions are executed on an ECM or an EBOT that is operating under the terms of, and

[62] *See* 76 FR at 66002.

[63] 44 U.S.C. 3507(d).

[64] 7 U.S.C. 19(a).

[65] *See* 76 FR 42521.

compliant with the applicable conditions of, the Commission's ECM/EBOT Grandfather Order which became effective September 20, 2010; (II) such agreements, contracts, and transactions are cleared by a registered derivatives clearing organization; and (III) such ECM or EBOT complies with all other Commission regulations implementing the provisions of the Dodd-Frank Act that are listed in Category 1 of the Appendix to this Order.

(4) Provides that the foregoing exemptions in paragraphs (1), (2) and (3) above shall not:

a. Limit in any way the Commission's authority with respect to any person, entity, or transaction pursuant to CEA sections 2(a)(1)(B), 4b, 4o, 6(c), 6(d), 6c, 8(a), 9(a)(2), or 13, or the regulations of the Commission promulgated pursuant to such authorities, including regulations pursuant to CEA section 4c(b) proscribing fraud;

b. Apply to any provision of the Dodd-Frank Act or the CEA that became effective prior to July 16, 2011;

c. Affect any effective or compliance date set forth in any rulemaking issued by the Commission to implement provisions of the Dodd-Frank Act;

d. Limit in any way the Commission's authority under section 712(f) of the Dodd-Frank Act to issue rules, orders, or exemptions prior to the effective date of any provision of the Dodd-Frank Act and the CEA, in order to prepare for the effective date of such provision, provided that such rule, order, or exemption shall not become effective prior to the effective date of the provision; and

e. Affect the applicability of any provision of the CEA to futures contracts or options on futures contracts, or to cash markets.

In its discretion, the Commission may condition, suspend, terminate, or otherwise modify this Order, as appropriate, on its own motion. This final order, as amended, shall be effective immediately.

Issued in Washington, DC, on December 19, 2011 by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Statement of Commissioner Scott D. O'Malia

For the fourth time this year,[66] I am concurring with the Commission's decision to provide market participants with temporary relief from certain provisions of the Dodd-Frank Act.[67] Again, I am concurring despite my belief that this iteration of the final exemptive order (the ''Second Iteration'') is deeply flawed—just like the July 14, 2011 final order (the ''First Iteration''). By now, it is well known that I object to arbitrary sunsets. It is also well known that I object to the Commission's recalcitrance—despite Congressional direction—to set forth comprehensive rulemaking and implementation schedules.[68] I will not expound upon such objections here. Instead, I would like to focus on the Commission's dogmatic adherence to the exemptive approach taken by the First Iteration, even in light of known facts. Such adherence sets a troubling precedent for our Dodd-Frank outstanding proposals.

The Goal

The First Iteration provided for the termination of exemptive relief on December 31, 2011, absent further Commission action (the ''December Sunset''). The primary reason that the Commission advanced for the December Sunset was that ''it would be appropriate to periodically re-examine the scope and extent of the proposed exemptive relief in order to ensure that the scope of relief is appropriately tailored to the schedule of implementation of the Dodd-Frank Act requirements.'' [69]

The Facts

Let us now examine the facts. After all, hindsight should be 20/20. First, the December Sunset has done nothing to ensure that the Commission completes its Dodd-Frank rulemakings more expeditiously. Specifically, the Commission has not completed the definitional rulemakings that Category 2 provisions (as the First and Second Iterations define such term) require to become effective. Additionally, the Commission has not completed the rulemakings on designated contract markets and swap execution facilities that would enable Category 3 provisions (as the First and Second Iterations define such term) to become effective without disrupting existing markets.

Second, the December Sunset has not permitted the Commission to tailor the scope and extent of the current exemption. This is unsurprising. Market participants cannot reasonably comply with Category 2 or 3 provisions unless the Commission completes predicate rulemakings. An arbitrary sunset cannot change this fact. Hence, the Second Iteration emphasizes that ''the proposed amendments to the existing July 14 Order would not change the nature or limit the scope of relief granted.'' [70]

Commission Response

As demonstrated above, the December Sunset achieved none of its goals. However, in formulating the Second Iteration, the Commission appears to have ignored inconvenient truths. The Second Iteration extends the December Sunset to July 16, 2012. Simultaneously, the Commission continues its refusal to provide market participants with its plan for the completion of Dodd-Frank rulemakings by July 16, 2012. In fact, at least one market participant has already indicated that—based on reasonable estimates of Commission progress—it would need exemptive relief beyond the

[66] *See* ''Do What You Can'', Opening Statement for the June 14, 2011 Commission Meeting, available at: *http://www.cftc.gov/PressRoom/SpeechesTestimony/omaliastatement061411;* Concurring Statement on the Order Regarding the Effective Date for Swap Regulation, dated July 14, 2011, available at: *http://www.cftc.gov/PressRoom/SpeechesTestimony/omaliastatement071411;* Concurring Statement, Second Extension of Temporary Exemptive Relief, dated October 18, 2011, available at: *http://www.cftc.gov/PressRoom/SpeechesTestimony/omaliastatement101811c.*

[67] To provide such relief, the Commission is relying on its exemptive authority under section 4(c) of the Commodity Exchange Act and its authority under section 712(f) of the Dodd-Frank Act.

[68] *See* H.R. Rep. No. 112–101, at 54 (2011), available at *http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt101/pdf/CRPT-112hrpt101.pdf.*

[69] The proposed order for *Effective Date for Swap Regulation,* 76 FR 35372, 35375 (Jun. 17, 2011). *See* the final order for *Effective Date for Swap Regulation,* 76 FR 42508, 42514 (Jul. 19, 2011) (stating that ''[t]he Commission has determined, for the reasons discussed in the proposed order, not to alter the expiration date(s) contained in the proposed order.'').

In both the First and Second Iterations, the Commission advanced another reason for a sunset. Essentially, the Commission argued that, with respect to the Category 3 provisions, ''limiting exemptive relief to a fixed period is consistent with the approach to transitional relief provided in sections 723(c) and 734 of the Dodd-Frank Act.'' 76 FR at 42514. *See* Section IV(A)(2) of the Second Iteration. With respect to the First Iteration, this statement was somewhat odd, since the December Sunset was earlier—by six months—than the end date for transitional relief specified by those two Dodd-Frank sections. With respect to the Second Iteration, this statement is accurate. However, the transitional relief specified by those two Dodd-Frank sections may have been predicated on the Commission completing its Dodd-Frank rulemakings by the general effective date of July 16, 2011. If the Commission assumes otherwise, then it would be imputing to Congress the intent to place market participants in a Catch-22. Specifically, the Commission would be stating that Congress intended to withdraw transitional relief from market participants before the Commission completes the Dodd-Frank structures to which market participants are explicitly supposed to transition. This imputation may be somewhat ungenerous. I believe that sections 723(c) and 734(c) of the Dodd-Frank Act, when interpreted in the proper context, do not support a sunset in the Second Iteration.

[70] Section V(B) of the Second Iteration.

new sunset.[71] I am already anticipating fifth and sixth votes on exemptive relief.

Let's Figure Out the Best Way to Reach the Goal

I support the Second Iteration because some certainty is better than no certainty. However, if the Commission is truly open to reconsidering its Dodd-Frank proposals—as some have indicated—the Second Iteration should have contained no arbitrary sunset. In the Second Iteration, the Commission displays a troubling willingness to adhere to prior convention.[72] By the fifth and sixth times I have to vote on temporary relief, I hope that the Commission will have agreed to grant market participants much-deserved certainty until applicable rulemakings become effective. Additionally, I hope that the Commission will have provided rulemaking and implementation schedules to market participants, so that they can plan to be in compliance when such rulemakings become effective. As Martin Luther King, Jr. has said: ''We must accept finite disappointment, but never lose infinite hope.''

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BILLING CODE 6351–01–P

[71] *See* comment letter from Nodal Exchange, LLC, dated November 23, 2011, to the proposed order on Effective Date for Swap Regulation, 76 FR 65999 (Oct. 25, 2011), available at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1102* (stating ''[i]t appears highly unlikely that Nodal Exchange will be able to be either a registered DCM or SEF by July 16, 2012 because the rules for neither DCMs nor SEFs have been finalized. Furthermore, based on the proposed rules for DCMs, the 180-day statutory review period will probably govern the application review process. Without further guidance from the Commission * * * the CFTC Proposed Release created unnecessary uncertainty for Nodal Exchange, its participants, its clearing house LCH.Clearnet, and the LCH.Clearnet clearing members for Nodal Exchange participants.'').

[72] According to the Office of Management and Budget, we have promulgated five final rulemakings that would each result in an annual effect on the American economy of more than $100 million a year. If the Commission continues to adhere to its Dodd-Frank approach, without consideration of new and applicable facts, then the Commission may impose substantial and unnecessary costs on the American economy—costs that we all can ill-afford.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2011–0016]

RIN 0960–AH32

Revisions to Rules of Conduct and Standards of Responsibility for Representatives

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our rules of conduct and standards of responsibility for representatives. These revisions further clarify our expectations regarding representatives' obligations to competently represent their clients and constitute official notice concerning our requirements and procedures. We are also updating other rules about the representation of parties. These changes are necessary because our current regulations are insufficient to address some representative conduct that is inappropriate, but has technically fallen outside the scope of our regulations. These changes will allow us to better protect the integrity of our administrative process, ensure that claimants receive competent and effective representation, and further clarify representatives' responsibilities in their dealings with us and with claimants.

DATES: These final rules are effective on January 23, 2012.

FOR FURTHER INFORMATION CONTACT: Andrew Maunz, Office of the General Counsel, Social Security Administration, P.O. Box 17788, Baltimore, MD 21235–7788, (410) 965–3196. 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:

Background

We may issue rules and regulations to administer the Social Security Act (Act). 42 U.S.C. 405(a), 902(a)(5), 810(a), and 1383(d)(1). We may issue regulations to recognize agents or other persons, other than attorneys, as claimant representatives. 42 U.S.C. 406(a)(1) and 1383(d)(2). Under the cited authority, we are revising our rules of conduct and standards of responsibility for representatives and other rules about the representation of parties in 20 CFR part 404 subparts J and R and part 416 subparts N and O.

We published a notice of proposed rulemaking (NPRM), *Revisions to Rules on Representation of Parties,* in the **Federal Register** on September 8, 2008. 73 FR 51963. We gave the public 60 days to comment on the NPRM. In these final rules, we are finalizing some of our proposed regulatory changes. We continue to consider the rest of our proposed regulatory changes, and we may publish additional final rules that address them.

Recognition of Representatives

We are revising our rules to state that we will notify a claimant and the person the claimant chooses to represent him or her if we decide not to recognize the person as a representative. We are also adding language to clarify our existing policy that we may refuse to recognize a person as a representative if he or she does not meet our requirements. We are adding this text in final 20 CFR 404.1705 and 416.1505.

We are also revising our rules in final 20 CFR 404.903(f) and 416.1403(f) to state that when we decide not to recognize a person as a representative, our action is not an initial determination that would allow the person the right to further administrative action and judicial review.

New Rules of Conduct for Representatives

The vast majority of representatives conduct their business before us ethically and do a conscientious job in assisting their clients. Unfortunately, there are a few representatives whose behavior requires us to take action to prevent them from representing claimants before us. The number of representatives sanctioned each year is small when compared to the entire universe of representatives. For example, over 27,000 representatives were involved at the hearings level in Fiscal Year 2011, but we have sanctioned, on average, only 11 representatives per year since 2007. Nevertheless, our experience has convinced us that there are sufficient instances of questionable conduct to warrant additional regulatory authority to address representative conduct that is inappropriate.

In the NPRM, we proposed to revise our list of prohibited actions to include: (1) Violating any section of the Act for which a criminal or civil monetary penalty is prescribed; (2) refusing to comply with any of our rules or regulations; (3) suggesting, assisting, or directing another person to violate our rules or regulations; (4) advising any claimant or beneficiary not to comply with any of our rules or regulations; and (5) failing to comply with our decision about sanctions. We are adopting these revisions because they will help us ensure that representatives comply with our rules.

We are also adding an additional prohibited action: a representative may not help a suspended or disqualified person provide representational services. Specifically, the representative may not knowingly assist a suspended

or disqualified person to provide representational services in a proceeding under titles II or XVI of the Act or to exercise the authority of a representative described in 20 CFR 404.1710 and 416.1510. In response to public comments, we are adopting final regulatory language different from that which we proposed for 20 CFR 404.1740(c)(12) and 416.1540(c)(12).

We are including these rules in final 20 CFR 404.1740 and 416.1540.

Delegations of Authority

To reflect an internal reorganization and a revised delegation of authority, we are also changing references to agency titles in several sections. These include changing the ''Deputy Commissioner for Disability and Income Security Programs'' to the ''General Counsel'' and the ''Associate Commissioner for Hearings and Appeals'' to the ''Deputy Commissioner for Disability Adjudication and Review.'' We are adding these revisions and making other technical changes in final 20 CFR 404.1750, 404.1755, 404.1765, 404.1799, 416.1550, 416.1555, 416.1565, and 416.1599.

Other Changes

We are adding, moving, and revising three current definitions to final 20 CFR 404.1703 and 416.1503. These definitions are for: ''Federal agency,'' ''Federal program,'' and ''representational services.'' We revised the proposed definition for ''representational services'' in response to public comments.

Because we are adding the definition of ''representational services'' in final 20 CFR 404.1703 and 416.1503 from language in current 20 CFR 404.1735 and 416.1535, there would not be any regulatory text remaining in 20 CFR 404.1735 and 416.1535. Therefore, we are removing and reserving final 20 CFR 404.1735 and 416.1535.

Finally, we are making other minor conforming and nonsubstantive changes.

Public Comments

We published an NPRM in the **Federal Register** on September 8, 2008, and we gave the public 60 days to comment on our proposed rules. 73 FR 51963. We received comments from 66 individuals and organizations during this period. We carefully read and considered each of them. You can view the public comments at *http://www.regulations.gov.*

The comments we received were detailed and insightful, and they were extremely helpful to our deliberations. This final rule contains a number of changes from our NPRM and reflects the commenters' thoughtful input. Below, we discuss and respond to the significant comments related to the proposals on the recognition of representatives and our standards of conduct. We did not address comments that were beyond the NPRM's scope. We also did not address comments about the proposed regulatory changes that we are still considering and may adopt in future final rules.

Rules of Conduct for Representatives

Comment: One commenter said that our proposed rules of conduct and standards of responsibility for representatives made our process adversarial.

Response: Our claims process is nonadversarial, but actions brought under our rules of conduct for representatives are adversarial. These final rules do not change this distinction.

Comment: A few commenters asked us to clarify what we meant in proposed 20 CFR 404.1740(c)(12) and 416.1540(c)(12), which stated that a representative may not ''[a]ssist another person whom we have suspended or disqualified.'' A few commenters wanted us to allow representatives to accept cases from persons whom we have suspended or disqualified. Another commenter wanted us to allow representatives to employ a suspended or disqualified person if the suspended or disqualified person does not have direct client contact.

Response: We clarified this language to explain more clearly the types of activities that will violate our rules of conduct. We are adopting final 20 CFR 404.1740(c)(12) and 416.1540(c) (12) to state that a representative may not knowingly assist a person whom we suspended or disqualified to provide representational services in a proceeding under titles II or XVI of the Act, or to exercise the authority of a representative described in 20 CFR 404.1710 and 416.1510.

This language permits a representative to employ a suspended or disqualified person if the suspended or disqualified person does not provide any of the noted services. For example, a suspended or disqualified person may provide clerical help to a representative. However, a representative will likely violate our rules if the representative knowingly permits the suspended or disqualified person to have substantive client contact or to work on the substantive aspects of a claim.

Comment: One commenter stated that our proposed additional rules of conduct for representatives would deter potential representatives, such as attorneys, from representing claimants before us.

Response: We did not adopt this comment. Every representative has an interest in ensuring that only the most competent, knowledgeable, and principled individuals represent claimants before us. Individuals undertaking the responsibility of representing claimants before us should understand that we have an interest in protecting claimants and ensuring the integrity of our administrative process. Additional conduct rules should not deter these potential representatives.

Comment: A few commenters expressed concern that some of our regulatory language in proposed 20 CFR 404.1740 and 416.1540 was too vague. Some commenters mentioned specific language that they thought was too vague.

Response: We do not agree with these comments. Much of the language that the commenters cited is already part of our current rules, such as the terms ''prompt and responsive answers,'' ''unreasonably delay,'' and ''threatening or intimidating language, gestures, or actions.'' Current 20 CFR 404.1740(b)(3)(ii), (c)(4), (c)(7), 416.1540(b)(3)(ii), (c)(4), and (c)(7). We proposed changes to these sections only to clarify them. Because we did not propose other substantive changes to these rules, we do not believe that we should revise them now.

We believe that the remaining proposed regulatory language sufficiently describes and gives adequate notice of the types of actions that would violate our rules of conduct. These regulations are similar to other standards of conduct, such as the American Bar Association Model Rules, because they do not list every act or omission that might constitute a violation of the rules of conduct. Developing this type of list would be inappropriate and virtually impossible to complete because representing claimants involves limitless factual situations. Rather, we deal with each complaint on a case-by-case basis to determine whether a representative engaged in actionable misconduct under the attending circumstances. When we decide whether to bring an action against a representative, we consider whether a reasonable person, in light of all the circumstances, would consider the act or omission a violation of the relevant rule.

Comment: One commenter wanted our process to include a system of review and appeal.

Response: We already have an appeals process for actions brought under our

rules of conduct for representatives. Either party to a representative disqualification or suspension action may ask the Appeals Council to review the hearing officer's decision. Current 20 CFR 404.1775 and 416.1575. The Appeals Council will assign a panel of three administrative appeals judges to consider and rule on the request for review. Current 20 CFR 404.1776 and 416.1576. These final rules do not change our current rules on this issue.

Comment: Several commenters wanted us to add the word ''knowingly'' to our proposed prohibited actions for representatives in proposed 20 CFR 404.1740(c)(8)–(13) and 416.1540(c)(8)–(13). They argued that we should only disqualify or suspend representatives who knowingly violate our rules.

Response: After careful consideration, we have adopted this comment for final 20 CFR 404.1740(c)(12) and 416.1540(c)(12). A representative will violate the rules of conduct for representatives if he or she knowingly assists a person, whom we suspended or disqualified, to provide representational services or to exercise the authority of a representative.

However, we did not adopt this comment for final 20 CFR 404.1740(c)(8)–(11) and (13) and 416.1540(c)(8)–(11) and (13) because each remaining prohibited action requires knowledge on the part of the representative. For example, one cannot unknowingly ''refuse to comply with any of our rules or regulations.'' Final 20 CFR 404.1740(c)(9) and 416.1540(c)(9). Moreover, the Act already states that only ''knowing'' violations will subject a representative to criminal and civil monetary penalties. See 42 U.S.C. 406(a)(5) and (b)(2), 408(a), 1011(a), 1307(a), and 1383a(a).

Comment: One commenter asked us to explain whether we will prohibit a representative from serving as a vocational expert or working for an insurance company if we deem them a ''fiduciary'' of a claimant in proposed 20 CFR 404.1740(a)(1) and 416.1540(a)(1).

Response: The term ''fiduciary'' exists in our current regulations. We proposed to clarify these sections in the NPRM. Our current rules do not specifically prohibit a representative from serving as a vocational expert or from working for an insurance company. However, we preclude a person from serving as a vocational expert in a claim in which the person is also the claimant's representative.

Comment: One commenter objected to our proposed language that required representatives to ''provid[e] prompt and responsive answers to requests from the Agency for information pertinent to processing of the claim.'' Proposed 20 CFR 404.1740(b)(3)(ii) and 416.1540(b)(3)(ii). The commenter asserted that representatives may be unable to comply with this requirement because third-party medical providers sometimes do not respond to properly submitted information requests.

Response: We added this affirmative duty to our regulations in 1998. 63 FR 41404. Our current rule requires a representative to: ''Act with reasonable diligence and promptness in representing a claimant. This includes providing prompt and responsive answers to [our] requests [] for information pertinent to processing of the claim.'' Current 20 CFR 404.1740(b)(3)(ii) and 416.1540(b)(3)(ii). These final rules do not require a representative to give us documents that the representative, despite diligent effort, could not obtain. We are not imposing any new or enhanced duties on representatives.

In the NPRM, we proposed to change punctuation in proposed 20 CFR 404.1740(b)(3)(ii) and 416.1540(b)(3)(ii) only to allow us to propose 20 CFR 404.1740(b)(3)(iii) and 416.1540(b)(3)(iii) (a proposed affirmative duty for representatives to maintain a paper copy of our appointment form, with original signatures, and to provide it to us on request). Since we are still considering whether to add this affirmative duty, we are not revising the current regulatory text at this time.

Comment: A few commenters thought our prohibited action in proposed 20 CFR 404.1740(c)(9) and 416.1540(c)(9) to ''[r]efuse to comply with any of our rules or regulations'' was overbroad. These commenters wanted an exception that would allow a representative to not comply with our rules and regulations if the representative is challenging the validity or applicability of the rule or regulation. Another commenter said that we should limit our proposed prohibited action to situations where there are no non-frivolous bases for the action. The commenter suggested that we look to Oregon's Rule of Professional Conduct 3.1 (Meritorious Claims and Contentions), which states that a lawyer must have a non-frivolous legal and factual basis for any action and must be able to make a good faith argument for the action.

Response: This proposed prohibited action comes directly from the Act: ''The Commissioner * * * may, after due notice and opportunity for hearing, suspend or prohibit from further practice before the Commissioner any[one] * * * who refuses to comply with the Commissioner's rules and regulations or who violates any provision of this section for which a penalty is prescribed.'' 42 U.S.C. 406(a)(1). Additionally, our current regulations state, ''When we have evidence that a representative * * * has violated the rules governing dealings with us, we may begin proceedings to suspend or disqualify that individual from acting in a representational capacity before us.'' Current 20 CFR 404.1745 and 416.1545.

Therefore, representatives are already on notice that we require them to comply with all of our rules, and we continue to believe that this is a reasonable requirement for representatives who want to practice before us. Our NPRM merely proposed to insert this statement of an existing requirement into our rules of conduct and standards of responsibility for representatives in proposed 20 CFR 404.1740 and 416.1540. Where our regulations conflict with a representative's State bar rules, our rules take precedence in our administrative proceedings. However, a representative should comply with a State bar rule that is more restrictive than our requirements.

We expect all representatives to comply with our rules and regulations. We currently assess each conduct complaint on its own merits to determine whether a person engaged in actionable misconduct. These final rules will not change this practice. A person may tell us that he or she is contesting a regulation's applicability or validity. If the person has a good faith, non-frivolous basis for refusing to follow one or more of our rules and regulations, we will seriously evaluate that basis before we decide whether to bring a disqualification or suspension proceeding.

We are therefore not adopting the commenters' suggested change in the final regulatory language.

Comment: One commenter asserted that several of our proposed prohibited actions sought to regulate speech in violation of the First Amendment to the Constitution and attorney-client privilege. Specifically, the commenter stated that our proposed 20 CFR 404.1740(c)(9)–(11) and 416.1540(c)(9)–(11) would interfere with the content of advice that an attorney could give a client.

Response: We disagree with these comments. Congress specifically authorized us to promulgate rules and regulations to administer the Act and to prescribe rules and regulations governing the recognition of agents who represent ''claimants before the

Commissioner of Social Security.'' *See* 42 U.S.C. 405(a), 406(a), and 1383(d)(2). Congress further stated that, after receiving due notice and an opportunity for a hearing, the Commissioner may suspend or prohibit from further practice before the agency any representative who refuses to comply with the Commissioner's rules and regulations or who violates any provision of this section for which a penalty is prescribed.

Representatives may share their opinions and have frank discussions with their clients. Our rule will not limit the freedom of speech guaranteed in the First Amendment to the Constitution or interfere with the attorney-client relationship or client confidentiality. We are not asking anyone to disclose information protected by the attorney-client privilege or the attorney work-product doctrine. However, similar to a court's responsibility to regulate admission to the practice of law before it, and as was recognized by Congress, we have a responsibility to regulate those persons who represent claimants before us. ''Membership in the bar'' and the ability to practice before an administrative agency ''is a privilege burdened with conditions.'' *Gentile* v. *State Bar of Nevada,* 501 U.S. 1030, 1066 (1991). The Supreme Court recently cited with approval ABA Model Rule of Professional Conduct 1.2(d), which states that a '''lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.''' *Milavetz, Gallop & Milavetz, P.A.* v. *United States,* 130 S. Ct. 1324, 1337–38 (2010). See Model Rules of Prof'l Conduct R. 1.2(d) (2011). While our rules and regulations govern more than just lawyers, the same principles apply to all representatives.

We have broad rulemaking authority to decide what types of representation-related misconduct are unacceptable. We decided that representatives cannot practice before us if they refuse to comply with our rules and regulations or advise claimants not to comply with our rules and regulations. These rules further our interest in regulating representatives, ensuring compliance with our laws and rules, and administering our programs efficiently.

Recognition of Representatives

Comment: One commenter wanted to know if our refusal to recognize a representative in one claim would apply to future cases in which a different claimant tries to appoint the same representative.

Response: As is our current process, we will reassess an individual's qualifications each time a claimant requests that individual to be a representative. Once the individual meets our criteria in final 20 CFR 404.1705 and 416.1505, we will recognize him or her as a representative. Once we recognize a person as a representative, additional claimants may appoint the recognized representative to serve as a representative.

Comment: A few commenters want our rules to clarify that a representative can appeal our refusal to recognize an appointment because the representative did not meet our criteria. Another commenter asserted that we must give a representative due process, notice, and the opportunity to respond if we refuse to recognize a claimant's appointment of a representative.

Response: The Act grants us authority to ''prescribe rules and regulations governing the recognition of'' non-attorney representatives. It also permits us to require representatives, before we recognize them, to ''show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases.'' 42 U.S.C. 406(a)(1) and 1383a(a).

If a claimant submits a request to appoint a person as his or her representative and that person has not previously represented claimants before us, we will not recognize the appointment if we know that the person does not meet our requirements. Current 20 CFR 404.1705 and 416.1505. However, if we have previously allowed the person to represent a claimant, we will continue to allow the person to represent claimants until we obtain a final decision disqualifying or suspending the person from further representation before us, following notice and an opportunity for a hearing. Current 20 CFR 404.1705 and 416.1505. We are clarifying this distinction by revising our proposed regulatory language in these sections.

Our decision not to recognize a person as a representative is not an initial determination that would allow the person the right to further administrative action and judicial review. Current 20 CFR 404.903(f) and 416.1403(f). If we do not recognize a person as a representative, we will notify that person and the claimant of our action.

Comment: Two commenters thought our language in proposed 20 CFR 404.1705(c) and 416.1505(c) was confusing. One commenter asked which ''requirements'' we meant when we proposed: ''We may refuse to recognize your appointed representative if the representative does not meet our requirements.'' Another commenter proposed alternative regulatory language to clarify the persons whom we will notify of our refusal to recognize an appointment.

Response: We agree with the commenters that the proposed language was unclear. We revised these final sections to clarify that a claimant's chosen representative must meet our requirements in 20 CFR 404.1705 and 416.1505 before we recognize the appointment. We also revised these final sections to clarify that a person whose appointment we do not recognize is not a ''representative'' under our rules and that we will notify the claimant and the person the claimant attempted to appoint if we do not recognize the appointment.

Definitions

Comment: One commenter opposed our proposal to move the definition of ''disqualified'' from current 20 CFR 404.1770(a)(2)(i) and 416.1570(a)(2)(i) to ''disqualify'' in proposed 20 CFR 404.1703 and 416.1503. The commenter said that this would cause confusion because our rules use the term in two different ways.

Response: We agree with this comment. We are keeping the definition in its current location in 20 CFR 404.1770(a)(2) and 416.1570(a)(2). However, we are adopting, with minor changes, our proposed definition for ''disqualify'' and are retaining our proposed language in 20 CFR 404.1770(a)(2) and 416.1570(a)(2).

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only.

Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These final rules contain information collection activities at 20 CFR 404.1755 and 404.1799. However, 44 U.S.C. 3518(c)(1)(B)(ii) exempts these activities from the OMB clearance requirements under the Paperwork Reduction Act of 1995.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, survivors, and disability insurance, Penalties, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR part 404 subparts J and R and part 416 subparts N and O as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of Part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.903 by revising paragraph (g) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(g) Refusing to recognize, disqualifying, or suspending a person from acting as your representative in a proceeding before us (see §§ 404.1705 and 404.1745);

* * * * *

Subpart R—[Amended]

■ 3. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6).

■ 4. Amend § 404.1703 by adding definitions for ''Federal agency'', ''Federal program'', and ''representational services'' in alphabetical order to read as follows:

§ 404.1703 Definitions.

* * * * *

Federal agency refers to any authority of the Executive branch of the Government of the United States.

Federal program refers to any program established by an Act of Congress or administered in whole or in part by a Federal agency.

* * * * *

Representational services means services performed for a claimant in connection with any claim the claimant has before us, any asserted right the claimant may have for an initial or reconsidered determination, and any decision or action by an administrative law judge or the Appeals Council.

* * * * *

■ 5. Amend § 404.1705 by removing the heading for paragraphs (a) and (b), revising paragraph (b) introductory text, and adding paragraph (c) to read as follows:

§ 404.1705 Who may be your representative.

* * * * *

(b) You may appoint any person who is not an attorney to be your representative in dealings with us if the person—

* * * * *

(c) We may refuse to recognize the person you choose to represent you if the person does not meet the requirements in this section. We will notify you and the person you attempted to appoint as your representative if we do not recognize the person as a representative.

■ 6. Remove and reserve § 404.1735 to read as follows:

§ 404.1735 [Reserved].

■ 7. Amend § 404.1740 by revising paragraphs (a)(1), (a)(2), (b) introductory text, (c) introductory text, (c)(6), and (c)(7)(iii), and adding paragraphs (c)(8) through (c)(13), to read as follows:

§ 404.1740 Rules of conduct and standards of responsibility for representatives.

(a) * * * (1) All attorneys or other persons acting on behalf of a party seeking a statutory right or benefit must, in their dealings with us, faithfully execute their duties as agents and fiduciaries of a party. A representative must provide competent assistance to the claimant and recognize our authority to lawfully administer the process. The following provisions set forth certain affirmative duties and prohibited actions that will govern the relationship between the representative and us, including matters involving our administrative procedures and fee collections.

(2) All representatives must be forthright in their dealings with us and with the claimant and must comport themselves with due regard for the nonadversarial nature of the proceedings by complying with our rules and standards, which are intended to ensure orderly and fair presentation of evidence and argument.

(b) *Affirmative duties.* A representative must, in conformity with the regulations setting forth our existing duties and responsibilities and those of claimants (see § 404.1512 in disability and blindness claims):

* * * * *

(c) *Prohibited actions.* A representative must not:

* * * * *

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination, or other administrative action by offering or granting a loan, gift, entertainment, or anything of value to a presiding official, agency employee, or witness who is or may reasonably be expected to be involved in the administrative decisionmaking process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence;

(7) * * *

(iii) Threatening or intimidating language, gestures, or actions directed at a presiding official, witness, or agency employee that result in a disruption of the orderly presentation and reception of evidence;

(8) Violate any section of the Act for which a criminal or civil monetary penalty is prescribed;

(9) Refuse to comply with any of our rules or regulations;

(10) Suggest, assist, or direct another person to violate our rules or regulations;

(11) Advise any claimant or beneficiary not to comply with any of our rules or regulations;

(12) Knowingly assist a person whom we suspended or disqualified to provide representational services in a proceeding under title II of the Act, or to exercise the authority of a representative described in § 404.1710; or

(13) Fail to comply with our sanction(s) decision.

■ 8. Amend § 404.1750 by revising paragraphs (a) and (d) to read as follows:

§ 404.1750 Notice of charges against a representative.

(a) The General Counsel or other delegated official will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

* * * * *

(d) The General Counsel or other delegated official may extend the 30-day period for good cause in accordance with § 404.911.

* * * * *

■ 9. Revise § 404.1755 to read as follows:

§ 404.1755 Withdrawing charges against a representative.

The General Counsel or other delegated official may withdraw charges against a representative. We will withdraw charges if the representative files an answer, or we obtain evidence, that satisfies us that we should not suspend or disqualify the representative from acting as a representative. When we consider withdrawing charges brought under § 404.1745(d) or (e) based on the representative's assertion that, before or after our filing of charges, the representative has been reinstated to practice by the court, bar, or Federal program or Federal agency that suspended, disbarred, or disqualified the representative, the General Counsel or other delegated official will determine whether such reinstatement occurred, whether it remains in effect, and whether he or she is reasonably satisfied that the representative will in the future act in accordance with the provisions of section 206(a) of the Act and our rules and regulations. If the representative proves that reinstatement occurred and remains in effect and the General Counsel or other delegated official is so satisfied, the General Counsel or other delegated official will withdraw those charges. The action of the General Counsel or other delegated official regarding withdrawal of charges is solely that of the General Counsel or other delegated official and is not reviewable, or subject to consideration in decisions made under §§ 404.1770 and 404.1790. If we withdraw the charges, we will notify the representative by mail at the representative's last known address.

■ 10. Amend § 404.1765 by revising paragraphs (a) and (b)(1), the second sentence of paragraph (e), and paragraph (l) to read as follows:

§ 404.1765 Hearing on charges.

(a) *Holding the hearing.* If the General Counsel or other delegated official does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

(b) *Hearing officer.* (1) The Deputy Commissioner for Disability Adjudication and Review or other delegated official will assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

* * * * *

(e) * * * The General Counsel or other delegated official will also be a party to the hearing.

* * * * *

(l) *Representation.* The representative, as the person charged, may appear in person and may be represented by an attorney or other representative. The General Counsel or other delegated official will be represented by one or more attorneys from the Office of the General Counsel.

* * * * *

■ 11. Amend § 404.1770 by revising the first sentence of paragraph (a)(1), paragraphs (a)(2), (a)(3) introductory text, and the second sentence of (a)(3)(ii) to read as follows:

§ 404.1770 Decision by hearing officer.

(a) *General.* (1) After the close of the hearing, the hearing officer will issue a decision or certify the case to the Appeals Council. * * *

(2) In deciding whether a person has been, by reason of misconduct, disbarred or suspended by a court or bar, or disqualified from participating in or appearing before any Federal program or Federal agency, the hearing officer will consider the reasons for the disbarment, suspension, or disqualification action. If the action was taken for solely administrative reasons (*e.g.,* failure to pay dues or to complete continuing legal education requirements), that will not disqualify the person from acting as a representative before us. However, this exception to disqualification does not apply if the administrative action was taken in lieu of disciplinary proceedings (*e.g.,* acceptance of a voluntary resignation pending disciplinary action). Although the hearing officer will consider whether the disbarment, suspension, or disqualification action is based on misconduct when deciding whether a person should be disqualified from acting as a representative before us, the hearing officer will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension, or disqualification. For purposes of determining whether a person has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or Federal agency, disqualified refers to any action that prohibits a person from participating in or appearing before any Federal program or Federal agency, regardless of how long the prohibition lasts or the specific terminology used.

(3) If the hearing officer finds that the charges against the representative have been sustained, he or she will either—

* * * * *

(ii) * * * Disqualification is the sole sanction available if the charges have been sustained because the representative has been disbarred or suspended from any court or bar to which the representative was previously admitted to practice or disqualified from participating in or appearing before any Federal program or Federal agency, or because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized.

* * * * *

■ 12. Amend § 404.1799 by revising paragraphs (b), (c), (d)(3), and (e) to read as follows:

§ 404.1799 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * *

(b) The suspended or disqualified person must submit any evidence the person wishes to have considered along with the request to be allowed to serve as a representative again.

(c) The General Counsel or other delegated official, upon notification of receipt of the request, will have 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council will make available to the suspended or disqualified person a copy of the report.

(d) * * *

(3) If a person was disqualified because the person had been

disqualified from participating in or appearing before a Federal program or Federal agency, the Appeals Council will grant the request for reinstatement only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that the person is now qualified to participate in or appear before that Federal program or Federal agency.

* * * * *

(e) The Appeals Council will mail a notice of its decision on the request for reinstatement to the suspended or disqualified person. It will also mail a copy to the General Counsel or other delegated official.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

■ 13. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 14. Amend § 416.1403 by revising paragraph (a)(7) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(7) Refusing to recognize, disqualifying, or suspending a person from acting as your representative in a proceeding before us (see §§ 416.1505 and 416.1545);

* * * * *

Subpart O—[Amended]

■ 15. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1127 and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–6 and 1383(d)).

■ 16. Amend § 416.1503 by adding definitions for ''Federal agency'', ''Federal program'', and ''representational services'' in alphabetical order to read as follows:

§ 416.1503 Definitions.

* * * * *

Federal agency refers to any authority of the Executive branch of the Government of the United States.

Federal program refers to any program established by an Act of Congress or administered in whole or in part by a Federal agency.

* * * * *

Representational services means services performed for a claimant in connection with any claim the claimant has before us, any asserted right the claimant may have for an initial or reconsidered determination, and any decision or action by an administrative law judge or the Appeals Council.

* * * * *

■ 17. Amend § 416.1505 by removing the heading for paragraphs (a) and (b), revising paragraph (b) introductory text, and adding paragraph (c) to read as follows:

§ 416.1505 Who may be your representative.

* * * * *

(b) You may appoint any person who is not an attorney to be your representative in dealings with us if the person—

* * * * *

(c) We may refuse to recognize the person you choose to represent you if the person does not meet the requirements in this section. We will notify you and the person you attempted to appoint as your representative if we do not recognize the person as a representative.

■ 18. Remove and reserve § 416.1535 to read as follows:

§ 416.1535 [Reserved].

■ 19. Amend § 416.1540 by revising paragraphs (a)(1), (a)(2), (b) introductory text, (c) introductory text, (c)(6), and (c)(7)(iii), and adding paragraphs (c)(8) through (c)(13), to read as follows:

§ 416.1540 Rules of conduct and standards of responsibility for representatives.

(a) * * * (1) All attorneys or other persons acting on behalf of a party seeking a statutory right or benefit must, in their dealings with us, faithfully execute their duties as agents and fiduciaries of a party. A representative must provide competent assistance to the claimant and recognize our authority to lawfully administer the process. The following provisions set forth certain affirmative duties and prohibited actions that will govern the relationship between the representative and us, including matters involving our administrative procedures and fee collections.

(2) All representatives must be forthright in their dealings with us and with the claimant and must comport themselves with due regard for the nonadversarial nature of the proceedings by complying with our rules and standards, which are intended to ensure orderly and fair presentation of evidence and argument.

(b) *Affirmative duties.* A representative must, in conformity with the regulations setting forth our existing duties and responsibilities and those of claimants (see § 416.912 in disability and blindness claims):

* * * * *

(c) *Prohibited actions.* A representative must not:

* * * * *

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination, or other administrative action by offering or granting a loan, gift, entertainment, or anything of value to a presiding official, agency employee, or witness who is or may reasonably be expected to be involved in the administrative decisionmaking process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence;

(7) * * *

(iii) Threatening or intimidating language, gestures, or actions directed at a presiding official, witness, or agency employee that result in a disruption of the orderly presentation and reception of evidence;

(8) Violate any section of the Act for which a criminal or civil monetary penalty is prescribed;

(9) Refuse to comply with any of our rules or regulations;

(10) Suggest, assist, or direct another person to violate our rules or regulations;

(11) Advise any claimant or beneficiary not to comply with any of our rules and regulations;

(12) Knowingly assist a person whom we suspended or disqualified to provide representational services in a proceeding under title XVI of the Act, or to exercise the authority of a representative described in § 416.1510; or

(13) Fail to comply with our sanction(s) decision.

■ 20. Amend § 416.1550 by revising paragraphs (a) and (d) to read as follows:

§ 416.1550 Notice of charges against a representative.

(a) The General Counsel or other delegated official will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

* * * * *

(d) The General Counsel or other delegated official may extend the 30-day period for good cause in accordance with § 416.1411.

* * * * *

■ 21. Revise § 416.1555 to read as follows:

§ 416.1555 Withdrawing charges against a representative.

The General Counsel or other delegated official may withdraw charges against a representative. We will withdraw charges if the representative files an answer, or we obtain evidence, that satisfies us that we should not suspend or disqualify the representative from acting as a representative. When we consider withdrawing charges brought under § 416.1545(d) or (e) based on the representative's assertion that, before or after our filing of charges, the representative has been reinstated to practice by the court, bar, or Federal program or Federal agency that suspended, disbarred, or disqualified the representative, the General Counsel or other delegated official will determine whether such reinstatement occurred, whether it remains in effect, and whether he or she is reasonably satisfied that the representative will in the future act in accordance with the provisions of section 206(a) of the Act and our rules and regulations. If the representative proves that reinstatement occurred and remains in effect and the General Counsel or other delegated official is so satisfied, the General Counsel or other delegated official will withdraw those charges. The action of the General Counsel or other delegated official regarding withdrawal of charges is solely that of the General Counsel or other delegated official and is not reviewable, or subject to consideration in decisions made under §§ 416.1570 and 416.1590. If we withdraw the charges, we will notify the representative by mail at the representative's last known address.

■ 22. Amend § 416.1565 by revising paragraphs (a) and (b)(1), the second sentence of paragraph (e), and paragraph (l) to read as follows:

§ 416.1565 Hearing on charges.

(a) *Holding the hearing.* If the General Counsel or other delegated official does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

(b) *Hearing officer.* (1) The Deputy Commissioner for Disability Adjudication and Review or other delegated official will assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

* * * * *

(e) *Parties.* * * * The General Counsel or other delegated official will also be a party to the hearing.

* * * * *

(l) *Representation.* The representative, as the person charged, may appear in person and may be represented by an attorney or other representative. The General Counsel or other delegated official will be represented by one or more attorneys from the Office of the General Counsel.

* * * * *

■ 23. Amend § 416.1570 by revising the first sentence of paragraph (a)(1), paragraphs (a)(2), (a)(3) introductory text, and the second sentence of (a)(3)(ii) to read as follows:

§ 416.1570 Decision by hearing officer.

(a) *General.* (1) After the close of the hearing, the hearing officer will issue a decision or certify the case to the Appeals Council. * * *

(2) In deciding whether a person has been, by reason of misconduct, disbarred or suspended by a court or bar, or disqualified from participating in or appearing before any Federal program or Federal agency, the hearing officer will consider the reasons for the disbarment, suspension, or disqualification action. If the action was taken for solely administrative reasons (*e.g.,* failure to pay dues or to complete continuing legal education requirements), that will not disqualify the person from acting as a representative before us. However, this exception to disqualification does not apply if the administrative action was taken in lieu of disciplinary proceedings (*e.g.,* acceptance of a voluntary resignation pending disciplinary action). Although the hearing officer will consider whether the disbarment, suspension, or disqualification action is based on misconduct when deciding whether a person should be disqualified from acting as a representative before us, the hearing officer will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension, or disqualification. For purposes of determining whether a person has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or Federal agency, disqualified refers to any action that prohibits a person from participating in or appearing before any Federal program or Federal agency, regardless of how long the prohibition lasts or the specific terminology used.

(3) If the hearing officer finds that the charges against the representative have been sustained, he or she will either—

* * * * *

(ii) * * * Disqualification is the sole sanction available if the charges have been sustained because the representative has been disbarred or suspended from any court or bar to which the representative was previously admitted to practice or disqualified from participating in or appearing before any Federal program or Federal agency, or because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized.

* * * * *

■ 24. Amend § 416.1599 by revising paragraphs (b), (c), (d)(3), and (e) to read as follows:

§ 416.1599 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * *

(b) The suspended or disqualified person must submit any evidence the person wishes to have considered along with the request to be allowed to serve as a representative again.

(c) The General Counsel or other delegated official, upon notification of receipt of the request, will have 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council will make available to the suspended or disqualified person a copy of the report.

(d) * * *

(3) If a person was disqualified because the person had been disqualified from participating in or appearing before a Federal program or Federal agency, the Appeals Council will grant the request for reinstatement only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that the person is now qualified to participate in or appear before that Federal program or Federal agency.

* * * * *

(e) The Appeals Council will mail a notice of its decision on the request for reinstatement to the suspended or disqualified person. It will also mail a copy to the General Counsel or other delegated official.

* * * * *

[FR Doc. 2011–32923 Filed 12–22–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9569]

RIN 1545–BK72

Use of Differential Income Stream as a Consideration in Assessing the Best Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that implement the use of the differential income stream as a consideration in assessing the best method in connection with a cost sharing arrangement. The text of these temporary regulations also serves as part of the text of proposed regulations contained in a cross-reference notice of proposed rulemaking (REG–145474–11) published in the Proposed Rules section in this issue of the **Federal Register**. This document also contains final regulations that provide cross-references in the final cost sharing regulations to relevant sections of these temporary regulations.

DATES: *Effective Date:* These regulations are effective December 19, 2011.

Applicability Dates: For dates of applicability, see § 1.482–7T(l).

FOR FURTHER INFORMATION CONTACT: Joseph L. Tobin or Mumal R. Hemrajani, (202) 435–5265 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking and notice of public hearing regarding additional guidance to improve compliance with, and administration of, the rules in connection with a cost sharing arrangement (CSA) were published in the **Federal Register** (70 FR 51116) (REG–144615–02) on August 29, 2005 (2005 proposed regulations). A correction to the notice of proposed rulemaking and notice of public hearing was published in the **Federal Register** (70 FR 56611) on September 28, 2005. A public hearing was held on December 16, 2005.

The Treasury Department and the IRS received numerous comments on a wide range of issues addressed in the 2005 proposed regulations. In response to these comments, temporary and proposed regulations were published in the **Federal Register** (74 FR 340–01 and 74 FR 236–01) (REG–144615–02) on January 5, 2009 (2008 temporary regulations). Corrections to the 2008 temporary regulations were published in the **Federal Register** on February 27, 2009 (74 FR 8863–01), March 5, 2009 (74 FR 9570–01, 74 FR 9570–02, and 74 FR 9577–01), and March 19, 2009 (74 FR 11644–01). A public hearing was held on April 21, 2009.

The Treasury Department and the IRS received comments on a range of issues addressed in the 2008 temporary regulations. Final regulations were issued in a previous issue of the **Federal Register** (REG–144615–02) (TD 9568) in December 2011 (''final regulations''). Certain guidance regarding discount rates was reserved in the final regulations because the Treasury Department and the IRS believe it is appropriate to solicit public comments on that subject matter. As explained herein, these temporary regulations provide a portion of that reserved guidance on discount rates. Simultaneous with these temporary regulations, the other portion of such reserved guidance concerning discount rates is being provided in proposed regulations elsewhere in this issue of the **Federal Register** (proposed regulations).

Explanation of Provisions

The Treasury Department and the IRS are aware that some taxpayers are taking unreasonable positions in applying the income method by using relatively low licensing discount rates, and relatively high cost sharing discount rates, without sufficiently considering the appropriate interrelationship of the discount rates and financial projections, thus deriving PCT Payments that are not in accordance with the arm's length standard.

In light of these concerns, the Treasury Department and the IRS are providing additional guidance as follows: (1) In the final regulations, further guidance on comparing the financial projections associated with the cost sharing alternative discounted at the rate appropriate for the cost sharing alternative with the financial projections associated with the licensing alternative discounted at the rate appropriate for the licensing alternative, and evaluating reliability considerations associated with such a comparison (§ 1.482–7(g)(4)(vi)(F)(*1*) (Reflection of similar risk profiles in cost sharing alternative and licensing alternative)); (2) in these temporary regulations, further guidance on evaluating results of application of the income method (§ 1.482–7T(g)(2)(v)(B)(*2*) (Implied discount rates) and (4)(vi)(F)(*2*) (Use of differential income stream as a consideration in assessing the best method)); and (3) in proposed regulations, a new specified application of the income method for directly determining the arm's length charge for PCT Payments (§ 1.482–7(g)(4)(v) (Application of income method using differential income stream)).

As discussed in the Preamble to the final regulations, any difference, if any, in market-correlated risks between the licensing and cost sharing alternatives is due solely to the different effects on risks of the PCT Payor's making licensing payments under the licensing alternative on the one hand, and the PCT Payor's making cost contributions and PCT Payments under the cost sharing alternative on the other hand. Thus, the difference in risk between the two scenarios should reflect solely (1) the incremental risk, if any, associated with the cost contributions taken on by the PCT Payor in developing cost shared intangibles under the cost sharing alternative, and (2) any difference in risk associated with the particular payment forms of the licensing payments and the PCT Payments, in light of the fact that the licensing payments in the licensing alternative are partially replaced by cost contributions and partially replaced by PCT Payments in the cost sharing alternative, each with its own payment form. Accordingly, the final regulations added § 1.482–7(g)(4)(vi)(F)(*1*) (Reflection of similar risk profiles in cost sharing alternative and licensing alternative), which provides that an analysis under the income method that uses a different discount rate for the cost sharing alternative than the licensing alternative will be more reliable the greater the extent to which any difference between the two discount rates reflects solely those differences in risk profiles of these two alternatives.

These temporary regulations build upon § 1.482–7(g)(4)(vi)(F)(*1*) of the final regulations by providing additional guidance relating to analysis of the interrelationship between the discount rate for the cost sharing alternative and the discount rate for the licensing alternative, and evaluation of the reasonableness of the implied discount rate that may be derived from the differential income stream between the licensing alternative and the cost sharing alternative. The differential income stream is the difference between the PCT Payor's undiscounted operating income under the cost sharing alternative (before PCT Payments) and the PCT Payor's undiscounted operating income under the licensing alternative. This difference equals the licensing payments to be made under the licensing alternative minus the PCT

Payor's cost contributions to be made under the cost sharing alternative. The differential income stream should be discounted at an appropriate rate in order to evaluate the reliability of a determination of the arm's length charge for the PCT Payment. Accordingly, these temporary regulations add § 1.482–7T(g)(4)(vi)(F)(*2*), which provides that an analysis under the income method that uses a different discount rate for the cost sharing alternative than for the licensing alternative will be more reliable the greater the extent to which the implied discount rate for the projected present value of the differential income stream is consistent with reliable direct evidence of the appropriate discount rate applicable for activities reasonably anticipated to generate an income stream with a similar risk profile to the differential income stream (such as those of the uncontrolled companies described in § 1.482–7T(g)(4)(viii) *Example 8*). The Treasury Department and the IRS have added § 1.482–7T(g)(4)(viii) *Example 8* to illustrate how § 1.482–7T(g)(4)(vi)(F)(*2*) may be used to evaluate the reliability of a particular application of the income method.

The Treasury Department and the IRS are also proposing a new specified application of the income method in § 1.482–7(g)(4)(v), which provides that the determination of the arm's length charge for the PCT Payment can be derived by discounting the differential income stream at an appropriate rate. The differential income stream approach to determining PCT Payments depends on reliably determining the discount rate associated with the differential income stream. This, in turn, requires an understanding of the economic meaning of the differential income stream. For example, assume a CSA in which the PCT Payor does not contribute any platform or operating contributions, and undertakes only routine exploitation activities for which it anticipates a routine return. In such case, the total undiscounted anticipated profits (before PCT Payments) to the CSA in the PCT Payor's territory can be thought of as comprising the anticipated routine exploitation profits plus the anticipated profits associated with the development of the cost shared intangibles in the PCT Payor's territory. Under the licensing alternative, on the other hand, the PCT Payor's total undiscounted anticipated profits consist solely of the anticipated routine exploitation profits. Thus, the differential income stream conceptually corresponds to the anticipated development profits of the cost shared intangibles. For these reasons, an appropriate discount rate for the differential income stream might be determined based, for example, on the weighted average cost of capital of uncontrolled companies whose activities consist primarily of developing intangibles similar to the cost shared intangibles, and whose resources, capabilities, or rights are similar to the platform contributions and cost shared intangibles under the CSA. The proposed regulations also add § 1.482–7(g)(4)(viii) *Example 9* to illustrate this newly specified application of the income method.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration (CCASBA) for comment on their impact on small business. CCASBA had no comments.

Drafting Information

The principal authors of these regulations are Joseph L. Tobin and Mumal R. Hemrajani, Office of the Associate Chief Counsel (International). However, other personnel from the Internal Revenue Service and the Treasury Department participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.482–7 and 1.482–7T also issued under 26 U.S.C. 482. * * *

■ **Par. 2.** Section 1.482–7 is amended by revising paragraphs (g)(2)(v)(B)(*2*) and (g)(4)(vi)(F)(*2*), and adding Example 8 to paragraph (g)(4)(viii), to read as follows:

§ 1.482–7 Methods to determine taxable income in connection with a cost sharing arrangement.

* * * * *

(g) * * *

(2) * * *

(v) * * *

(B) * * *

(*2*) [Reserved]. For further guidance, see § 1.482–7T(g)(2)(v)(B)(*2*).

* * * * *

(4) * * *

(vi) * * *

(F) * * *

(*2*) [Reserved]. For further guidance, see § 1.482–7T(g)(4)(vi)(F)(*2*).

* * * * *

(viii) * * *

Example 8. [Reserved]. For further guidance, see § 1.482–7T(g)(4)(viii), *Example 8.*

* * * * *

■ **Par. 3.** Section 1.482–7T is added to read as follows:

§ 1.482–7T Methods to determine taxable income in connection with a cost sharing arrangement (temporary).

(a) through (g)(2)(v)(B)(*1*) [Reserved]. For further guidance, see § 1.482–7(a) through (g)(2)(v)(B)(*1*).

(*2*) *Implied discount rates.* In some circumstances, the particular discount rate or rates used for certain activities or transactions logically imply that certain other activities will have a particular discount rate or set of rates (implied discount rates). To the extent that an implied discount rate is inappropriate in light of the facts and circumstances, which may include reliable direct evidence of the appropriate discount rate applicable for such other activities, the reliability of any method is reduced where such method is based on the discount rates from which such an inappropriate implied discount rate is derived. See paragraphs (g)(4)(vi)(F)(*2*) and (g)(4)(viii), *Example 8* of this section.

(g)(2)(v)(B)(*3*) through (g)(4)(vi)(F)(*1*) [Reserved]. For further guidance, see § 1.482–7(g)(2)(v)(B)(*3*) through (g)(4)(vi)(F)(*1*).

(*2*) *Use of differential income stream as a consideration in assessing the best method.* An analysis under the income method that uses a different discount rate for the cost sharing alternative than for the licensing alternative will be more reliable the greater the extent to which the implied discount rate for the projected present value of the differential income stream is consistent with reliable direct evidence of the appropriate discount rate applicable for activities reasonably anticipated to generate an income stream with a

similar risk profile to the differential income stream. Such differential income stream is defined as the stream of the reasonably anticipated residuals of the PCT Payor's licensing payments to be made under the licensing alternative, minus the PCT Payor's cost contributions to be made under the cost sharing alternative. See, for example, *Example 8* of this paragraph (g)(4)(viii).

(g)(4)(vii) through (viii) (*Example 7*) [Reserved]. For further guidance, see § 1.482–7(g)(4)(vii) through (g)(4)(viii) (*Example 7*).

(viii) Example 8. (i) The facts are the same as in *Example 1,* except that the taxpayer determines that the appropriate discount rate for the cost sharing alternative is 20%. In addition, the taxpayer determines that the appropriate discount rate for the licensing alternative is 10%. Accordingly, the taxpayer determines that the appropriate present value of the PCT Payment is $146 million.

(ii) Based on the best method analysis described in *Example 2,* the Commissioner determines that the taxpayer's calculation of the present value of the PCT Payments is outside of the interquartile range (as shown in the sixth column of *Example 2*), and thus warrants an adjustment. Furthermore, in evaluating the taxpayer's analysis, the Commissioner undertakes an analysis based on the difference in the financial projections between the cost sharing and licensing alternatives (as shown in column 11 of *Example 1*). This column shows the anticipated differential income stream of additional positive or negative income for FS over the duration of the CSA Activity that would result from undertaking the cost sharing alternative (before any PCT Payments) rather than the licensing alternative. This anticipated differential income stream thus reflects the anticipated incremental undiscounted profits to FS from the incremental activity of undertaking the risk of developing the cost shared intangibles and enjoying the value of its divisional interests. Taxpayer's analysis logically implies that the present value of this stream must be $146 million, since only then would FS have the same anticipated value in both the cost sharing and licensing alternatives. A present value of $146 million implies that the discount rate applicable to this stream is 34.4%. Based on a reliable calculation of discount rates applicable to the anticipated income streams of uncontrolled companies whose resources, capabilities, and rights consist primarily of software applications intangibles and research and development teams similar to USP's platform contributions to the CSA, and which income streams, accordingly, may be reasonably anticipated to reflect a similar risk profile to the differential income stream, the Commissioner concludes that an appropriate discount rate for the anticipated income stream associated with USP's platform contributions (that is, the additional positive or negative income over the duration of the CSA Activity that would result, before PCT Payments, from switching from the licensing alternative to the cost sharing alternative) is 16%, which is significantly less than 34.4%. This conclusion further suggests that Taxpayer's analysis is unreliable. See paragraphs (g)(2)(v)(B)(*2*) and (4)(vi)(F)(*1*) and (*2*) of this section.

(iii) The Commissioner makes an adjustment of $296 million, so that the present value of the PCT Payments is $442 million (the median results as shown in column 6 of *Example 2*).

(g)(5) through (k) [Reserved]. For further guidance, see § 1.482–7(g)(5) through (k).

(l) *Effective/Applicability Date.* Treas. Reg. § 1.482–7T(g)(2)(v)(B)(*2*), (g)(4)(vi)(F)(*2*) and (g)(4)(viii), *Example 8* apply to taxable years beginning on or after December 19, 2011.

(m) [Reserved]. For further guidance, see § 1.482–7(m).

(n) *Expiration date.* The applicability of this section expires on December 19, 2014.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: December 8, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–32728 Filed 12–19–11; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1142]

RIN 1625–AA87

Security Zone; On the Waters in Kailua Bay, Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters south of Kapoho Point and a nearby channel in Kailua Bay within the Honolulu Captain of the Port (COTP) Zone. This security zone is necessary to ensure the safety of the President of the United States and his family members.

DATES: This rule is effective from 6 a.m. (HST) on December 21, 2011, through 8 p.m. (HST) on January 7, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket USCG–2011–1142 are available online by going to *www.regulations.gov,* inserting USCG–2011–1142 in the ''Keyword'' box, and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Commander Scott O. Whaley, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 522–8264 (ext. 352), email *Scott.O.Whaley@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary 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(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The details of the President's intended travel to Hawaii were not made available to the Coast Guard in sufficient time to issue a notice of proposed rulemaking. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect the President and his family members; therefore, a 30-day notice period is impracticable. Delaying the effective date would be contrary to the security zone's intended objectives of protecting high-ranking officials, mitigating potential terroristic acts and enhancing public and maritime safety and security. Publishing a Notice of Public Rule Making (NPRM) and delaying the effective date would be contrary to the public interest since the occasion would occur before a notice-and-comment rulemaking could be completed, thereby jeopardizing the safety of the President of the United States, members of his family members, and other senior government officials. The COTP finds that this temporary security zone needs to be effective by December 21, 2011, to ensure the safety of the President of the United States and members of his official party visiting the

Kailua Bay area on the eastern coast of Oahu, Hawaii.

Background and Purpose

From December 21, 2011, through January 7, 2012, the President of the United States and his family members plan to visit near the Kailua Bay shoreline on Oahu, Hawaii. This position is located adjacent to U.S. navigable waters in the Honolulu Captain of the Port Zone. The Coast Guard is establishing this security zone to ensure the safety of the President of the United States and his family members.

Discussion of Temporary Final Rule

This temporary final rule is effective from 6 a.m. HST on December 21, 2011 through 8 p.m. HST on January 7, 2012. The security zone area is located within the Honolulu Captain of the Port Zone (See 33 CFR 3.70–10) and covers all U.S. navigable waters in the Kailua Bay on the west side of a line connecting Kapoho Point and continuing at a bearing of 222° (true) to Namala Place road; as well as the nearby channel from its entrance at Kapoho Point to a point 150-yards to the southwest of the N. Kalaheo Avenue Road Bridge. This zone extends from the surface of the water to the ocean floor. This zone will include the navigable waters of the channel beginning at point 21°24′56″ N, 157°44′58″ W, then extending to 21°25′26″ N, 157°44′21″ W (Kapoho Point) including all the waters to the west of a straight line to 21°24′58″ N, 157°44′35″ W (Namala Place), and then extending back to the original point 21°24′56″ N, 157°44′58″ W.

Three (3) yellow buoys will be placed in proximity of the security zone along the security zone boundary and one (1) yellow buoy will be placed at the channel boundary southwest of the N. Kalaheo Avenue Road Bridge as visual aids for mariners and the public to approximate the zone. An illustration of the security zone will be made available on *www.regulations.gov* in docket for this rulemaking, USCG–2011–1142.

In accordance with the general regulations in 33 CFR Part 165, Subpart D, no person or vessel will be permitted to transit into or remain in the zone except for authorized support vessels, aircraft and support personnel, or other vessels authorized by the Captain of the Port. Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the zone. Vessels, aircraft, or persons in violation of this rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the limited duration of the zone, the limited geographic area affected by it, and the lack of commercial vessel traffic affected by the zone.

Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking.

If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Scott O. Whaley at (808) 522–8264 ext. 352. The Coast Guard will not retaliate against small entities that question or complain about this temporary final rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This regulation establishes one security zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T14–215 to read as follows:

§ 165.T14–215 Security Zone; On the Waters in Kailua Bay, Oahu, HI.

(a) *Location.* The following area, within the Honolulu Captain of the Port Zone (See 33 CFR 3.70–10), from the surface of the water to the ocean floor is a temporary security zone: All waters in Kailua Bay to the west of a line beginning at Kapoho Point and thence southwestward at a bearing of 222° (true) to the shoreline at Namala Place road; as well as the nearby channel from its entrance at Kapoho Point to a point 150-yards to the southwest of the N. Kalaheo Avenue Road Bridge. This zone extends from the surface of the water to the ocean floor. This zone will include the navigable waters of the channel beginning at point 21°24′56″ N, 157°44′58″ W, then extending to 21°25′26″ N, 157°44′21″ W (Kapoho Point) including all the waters to the west of a straight line to 21°24′58″ N, 157°44′35″ W (Namala Place), and then extending back to the original point 21°24′56″ N, 157°44′58″ W.

(b) *Effective period.* This section is effective from 6 a.m. HST on December 21, 2011, through 8 p.m. HST on January 7, 2012.

(c) *Regulations.* The general regulations governing security zones contained in 33 CFR 165.33, subpart D, apply to the security zone created by this temporary final rule.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR part 165.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu.

(3) Persons desiring to transit the security zones identified in paragraph (a) of this section may contact the Captain of the Port at Command Center telephone number (808) 842–2600 and (808) 842–2601, fax (808) 842–2624 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the zones. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Honolulu or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the zones by Federal, State, and local agencies.

(d) *Notice of enforcement.* The Captain of the Port Honolulu will cause notice of the enforcement of the security zone described in this section to be made by verbal broadcasts and written notice to mariners and the general public.

(e) *Definitions.* As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Honolulu to assist in enforcing the security zones described in paragraph (a) of this section.

Dated: December 12, 2011.

J.M. Nunan,

CAPT, U.S. Coast Guard, Captain of the Port Honolulu.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2011–0017; EPA–R05–OAR–2011–0106; FRL–9610–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio and Indiana; Redesignation of the Ohio and Indiana Portions of the Cincinnati-Hamilton 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving, under the Clean Air Act (CAA), Ohio's and Indiana's requests to redesignate their respective portions of the Cincinnati-Hamilton nonattainment area (for Ohio: Butler, Clermont, Hamilton, and Warren

Counties, Ohio; for Indiana: a portion of Dearborn County) to attainment for the 1997 annual National Ambient Air Quality Standard (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). The Ohio Environmental Protection Agency (Ohio EPA) submitted its request on December 9, 2010, and the Indiana Department of Environmental Management (IDEM) submitted its request on January 25, 2011. EPA's approvals here involve several additional related actions. EPA has determined that the entire Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ standard. EPA is approving, as revisions to the Ohio and Indiana State Implementation Plans (SIPs), the states' plans for maintaining the 1997 annual $PM_{2.5}$ NAAQS through 2021 in the area. EPA is approving the 2005 emissions inventories for the Ohio and Indiana portions of the Cincinnati-Hamilton area as meeting the comprehensive emissions inventory requirement of the CAA. Finally, EPA finds adequate and is approving Ohio and Indiana's Nitrogen Oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2021 for the Cincinnati-Hamilton area.

DATES: *Effective Date:* This rule will be effective December 23, 2011.

ADDRESSES: EPA has established two dockets for this action under Docket Identification EPA–R05–OAR–2011–0017 and EPA–R05–OAR–2011–0106, containing identical material but nominally addressing Ohio's and Indiana's submittals, respectively. All documents in these dockets are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon at (312) 353–8290 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for the actions?
II. What are the actions EPA is taking?
III. What is EPA's response to comments?
IV. Why is EPA taking these actions?
V. Final Action
VII. Statutory and Executive Order Reviews

I. What is the background for the actions?

The Ohio EPA submitted its request on December 9, 2010, and IDEM submitted its request on January 25, 2011, to redesignate their respective portions of the Cincinnati-Hamilton nonattainment area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, and for EPA approval of both states' SIP revisions containing maintenance plans for the area. In an action published on October 19, 2011 (76 FR 64825), EPA proposed approval of Ohio and Indiana's plans for maintaining the 1997 annual $PM_{2.5}$ NAAQS, including the emissions inventories submitted pursuant to CAA section 172(c)(3); and the NO_X and $PM_{2.5}$ MVEBs for the Ohio and Indiana portions of the Cincinnati-Hamilton area as contained in the maintenance plan. Additional background for today's action is set forth in EPA's October 19, 2011, notice of direct final rulemaking, which EPA withdrew on December 6, 2011, following receipt of adverse comments.

II. What are the actions EPA is taking?

EPA has determined that the entire Cincinnati-Hamilton area is attaining the 1997 annual $PM_{2.5}$ standard (76 FR 60373) and that the Ohio and Indiana portions of the area have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Thus, EPA is approving the requests from the states of Ohio and Indiana to change the legal designation of their portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. This action does not address the Kentucky portion of the Cincinnati-Hamilton area. EPA is also taking several additional actions related to Ohio's and Indiana's $PM_{2.5}$ redesignation requests, as discussed below.

EPA is approving Indiana's and Ohio's $PM_{2.5}$ maintenance plans for the Cincinnati-Hamilton area as revisions to the Ohio and Indiana SIP (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plans are designed to keep the Cincinnati-Hamilton area in attainment of the 1997 annual $PM_{2.5}$ NAAQS through 2021.

EPA is approving 2005 emissions inventories for primary $PM_{2.5}$,[1] NO_X, and sulfur dioxide (SO_2),[2] documented in Ohio's and Indiana's $PM_{2.5}$ redesignation request submittals. These emissions inventories satisfy the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory.

Finally, EPA finds adequate and is approving Ohio's and Indiana's 2015 and 2021 primary $PM_{2.5}$ and NO_X MVEBs for the Cincinnati-Hamilton area. These MVEBs will be used in future transportation conformity analyses for the area. Further discussion of the basis for these actions is provided below.

III. What is EPA's response to comments?

EPA received two sets of comments submitted by Robert Ukeiley on behalf of Sierra Club: The first set, dated October 19, 2011, and the second set dated November 18, 2011. A summary of the comments and EPA's responses are provided below.

Comment 1a: The comment contends that it is inappropriate for EPA to redesignate these areas to attainment at this time, claiming that EPA is illegally delaying issuing a final rule to revise the annual $PM_{2.5}$ NAAQS, and that EPA's Clean Air Science Advisory Committee (CASAC) has recommended adoption of a lower NAAQS. The Commenter alleges that EPA is removing the protection of a scientifically inadequate NAAQS, while not adopting a more protective standard.

Response 1a: This redesignation does not remove the protection of the 1997 annual $PM_{2.5}$ NAAQS. This redesignation does not concern the new NAAQS, addresses only the 1997 annual $PM_{2.5}$ NAAQS, and has no impact on EPA's actions with respect to a revised NAAQS.

Comment 1b: The Commenter claims that ''EPA has failed to conduct an adequate analysis under Clean Air Act Section 110(l) on what effect redesignation will have on the 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_X NAAQS, the 1-hour SO_2 NAAQS and the 1997 and 2008 75 parts per billion ozone NAAQS.'' In subsequent comments, the Commenter also states,

[1] Fine particulates directly emitted by sources and not formed in a secondary manner through chemical reactions or other processes in the atmosphere.

[2] NO_X and SO_2 are precursors for fine particulates through chemical reactions and other related processes in the atmosphere.

''EPA has not conducted an adequate analysis of the effect redesignation will have on other National Ambient Air Quality Standards''.

Response 1b: Section 110(l) provides in part: ''the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter.'' As a general matter, EPA must and does consider section 110(l) requirements for every SIP revision, including whether the revision would ''interfere with'' any applicable requirement. *See, e.g.,* 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429, 28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005). Neither Ohio's nor Indiana's redesignation request and maintenance plan for the 1997 annual $PM_{2.5}$ NAAQS revises or removes any existing emissions limit for any NAAQS, nor does it alter any existing control requirements. On that basis, EPA concludes that the redesignations will not interfere with attainment or maintenance of any of these air quality standards. The Commenter does not provide any information in its comment to indicate that approval of these redesignations would have any impact on the Area's ability to comply with on the 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_2 NAAQS, the 1-hour SO_2 NAAQS or the 1997 8-hour ozone NAAQS and 2008 75 parts per billion ozone NAAQS. In fact, the maintenance plans provided with both states' submissions demonstrate a decline in the direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions over the timeframe of the initial maintenance period. As a result, the redesignations do not relax any existing rules or limits, nor will the redesignation alter the status quo air quality.[3] The Commenter has not explained why the redesignation might interfere with attainment of any standard or with satisfaction of any other requirement, and EPA finds no basis under section 110(l) for EPA to disapprove the SIP revision at issue or to redesignate the area as requested.

Comment 1c: The Commenter elaborates on the first comment in the second set of comments submitted, claiming ''For example, but this is only one example, as explained below the Ohio and Indiana SIPs do not currently have Reasonable Available Control Technology (RACT) standards in place for $PM_{2.5.}$ Implementing these RACT standards would have reduced NO_X and SO_2 which would have a co-benefit of helping with the 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_X NAAQS, the 1-hour SO_2 NAAQS, and the 1997 and 2008 ozone NAAQS as well as visibility. EPA needs to demonstrate that removing this co-benefit will not interfere with attainment, reasonable further progress and any other applicable requirement.''

Response 1c: This example is fallacious, for reason given in response 6(b) below—no RACT is required because the area is attaining the standard.

Comment 2a: The Commenter argues that EPA has not established that any of the emission reductions did not come from the NO_X SIP Call, CAIR (the Clean Air Interstate Rule), and CSAPR (the Cross-State Air Pollution Rule, also known as the Transport Rule).

Response 2a: EPA disagrees with the Commenter's assertion. EPA and the states have shown that emission reductions arose both from the transport regulations listed above and from other regulatory requirements. The Cincinnati-Hamilton area contains various sources of emissions (point source, area, and mobile), and emission reductions from the nonattainment year of 2005 to the attainment year of 2008 are attributed to many permanent and enforceable measures. The NO_X SIP Call, CAIR, and CSAPR are all measures that have resulted in emission reductions from point source Electric Generating Units (EGUs). In addition, emission reduction from mobile sources, which account for 53% of NO_X emissions and 58% of direct $PM_{2.5}$ for the nonattainment year of 2005, are attributed to permanent and enforceable engine and fuel standards. Due to these permanent and enforceable measures, mobile sources reduced their emissions by 9,367 tons of $NO_{X,}$ and 792 tons of direct $PM_{2.5}$ between the years of 2005 to 2008.

Comment 2b. The Commenter asserts that emission reductions pursuant to NO_X SIP Call, CAIR and CSAPR programs are not permanent and enforceable because these programs are cap and trade programs. The Commenter further opines that any source which reduced its actual emissions pursuant to one of these programs could at any time in the future choose to increase their emissions by purchasing emission credits.

Response 2b. Contrary to the Commenter's statement, EPA did establish in the proposal notice that at least part of the emission reductions that helped the area achieve attainment came from programs other than the NO_X SIP Call, CAIR and CSAPR. The notice lists several permanent and enforceable reductions in emissions resulting from implementation of the Ohio and Indiana SIPs, applicable Federal air pollution control regulations, and other reductions that are not ''cap and trade'' programs. Those programs include Tier 2 vehicle standards, heavy-duty gasoline and diesel highway vehicle standards, nonroad spark-ignition engines and recreational engines standards, large nonroad diesel engine standards, open burning bans, and fugitive emissions standards. *See* 76 FR 65465.

Further, EPA disagrees with the Commenter's conclusion that emission reductions associated with trading programs such as the NO_X SIP Call, CAIR, and CSAPR are not permanent and enforceable simply because the underlying program is an emissions trading program. The Commenter appears to be arguing that these reductions cannot be considered permanent and enforceable within the meaning of section 107(d)(3)(E)(iii) of the CAA. This section 107(d)(3)(E)(iii) requires that, in order to redesignate an area to attainment, the Administrator must determine that ''the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions.'' EPA disagrees with the Commenter's conclusion that reductions from trading programs can't be considered permanent and enforceable because these programs allow individual sources to choose between purchasing emission credits and reducing emissions.

The final CSAPR allows sources to trade allowances with other sources in the same or different states while firmly constraining any emissions shifting that may occur by requiring a strict emission ceiling in each state (the budget plus variability limit). As explained in EPA's proposed redesignation notice for the Ohio and Indiana portions of the Cincinnati-Hamilton area, the emission reduction requirements of CAIR are enforceable through the 2011 control period, and because CSAPR has now been promulgated to address the requirements previously addressed by CAIR and gets similar or greater reductions in the relevant areas in 2012 and beyond, EPA considers the emission reductions that led to attainment in the Cincinnati-Hamilton area to be permanent and enforceable.

[3] EPA notes that the Cincinnati/Northern Kentucky Area does not have violating monitors for the 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_X NAAQS, or the 1-hour SO_2 NAAQS, the 1-hour and 8-hour ozone NAAQS, and that this Area has never been designated nonattainment for 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_X NAAQS, or the 1-hour SO_2 NAAQS.

The emission ceilings within each state are a permanent requirement of the CSAPR and are made enforceable through the associated Federal Implementation Plans.

EPA responded to a similar comment in its ''Approval and Promulgation of Air Quality Implementation Plans; Redesignation of the Evansville area to attainment of the Fine Particulate Matter Standard'' 76 FR 59527, 59529/1, September 27, 2011. In that notice, EPA discusses several factors which support EPA's determination that the SO_2 reductions in the Evansville area are permanent and enforceable, and which also apply to the Cincinnati area. First, given the mandates under CSAPR, any utility that has already spent the hundreds of millions of dollars to install scrubbers will find continued effective operation of those controls to be far more cost-effective than disregarding this investment and either expending similar capital installing replacement scrubbers elsewhere or purchasing credits at a price equivalent to that capital already spent. In short, any utility in a state covered by CSAPR provisions related to $PM_{2.5}$ that has installed scrubbers is almost certain under CSAPR to retain the scrubbers and operate them effectively. Second, any action by a utility that increases its emissions, requiring the purchase of allowances, necessitates a corresponding reduction by the utility that sells the allowances. Given the regional nature of particulate matter, this corresponding emission reduction will have an air quality benefit that will compensate at least in part for the impact of any emission increase from utility companies outside but near the Cincinnati-Hamilton area. In accordance with the opinion of the Court of Appeals for the District of Columbia Circuit, CSAPR includes assurance provisions to ensure that the necessary emission reductions occur within each covered state.

The recent proposed rule revision referenced by the Commenter would amend the CSAPR assurance penalty provisions for all states within the program so they start in 2014 instead of 2012. 76 FR 63860, October 14, 2011. As explained in the proposal, which was subject to public review and comment, this revision would promote the development of allowance market liquidity, thereby smoothing the transition from the CAIR programs to the CSAPR programs in 2012.

Further, Ohio's and Indiana's maintenance plans provide for verification of continued attainment by performing future reviews of triennial emissions inventories and also for contingency measures to ensure that the NAAQS is maintained into the future if monitored increases in ambient $PM_{2.5}$ concentrations occur. 76 FR 64825. For this and the above reasons, EPA disagrees that the Commenter has identified a basis on which EPA should disapprove this SIP revision.

Comment 3: The Commenter asserts that ''Emissions calculations for on-road mobile sources fail to consider 15% ethanol in gasoline.''

Response 3: Ethanol 15 (E15) is not mandated by EPA. EPA granted a partial waiver for vehicles model years 2001 and newer, light duty vehicles (76 FR 4662) to be able to use E15. To receive a waiver under CAA section 211(f)(4), a fuel or fuel additive manufacturer must demonstrate that a new fuel or fuel additive will not cause or contribute to the failure of engines or vehicles to achieve compliance with the emission standards to which they have been certified over their useful life. Data used to act upon the approval of the E15 partial waiver showed that model year 2001 and newer vehicles would still meet their certified engine standards for emissions for both short and long term use, and use of E15 would not significantly increase the emission from these engines. EPA's partial waiver for E15 is based on extensive studies done by the Department of Energy, as well as the Agency's engineering assessment to determine the effects of exhaust and evaporative emissions for the fleet prior to the partial waiver. The criteria for granting the waiver was not that there are no emission impacts of E15, but rather that vehicles operating on it would not be expected to violate their emission standards in-use. As discussed in the waiver decision, there are expected to be some small emission impacts. E15 is expected to cause a small immediate emission increase in NO_X emissions. However, due to its lower volatility than the E10 currently in-use, its use is also expected to result in lower evaporative VOC emissions. Any other emissions impacts related to E15 would be a result of misfueling of E15 in model year 2000 and older vehicles, and recreational or small engines. EPA has approved regulations dealing specifically with the mitigation of misfueling and reducing the potential increase in emissions from misfueling (76 FR 44406).

The partial waivers that EPA has granted to E15 do not require that E15 be made or sold. The waivers merely allow fuel or fuel additive manufacturers to introduce E15 into commerce if they meet the waivers' conditions. Other Federal, state and local requirements must also be addressed before E15 may be sold. The granting of the partial waivers is only one of several requirements for registration and distribution of E15.

Since E15 may never be used in Ohio and Indiana, and even if it is, due to the small and opposite direction of emission impacts of E15, the limited vehicle fleet which can use it, and the measures required to avoid mitigating misfueling, EPA believes that any potential emission impacts of E15 will be less than the maintenance plan safety margin by which Ohio and Indiana show maintenance.

Comment 4a: The Commenter contends that the ''Ohio and Indiana maintenance plans will not provide for maintenance for ten years after the redesignation,'' based on the Commenter's belief that EPA will be unable to finalize its approval of the requests for redesignation by the end of 2011.

Response 4a: Since EPA has promulgated its approvals of the redesignation requests of Ohio and Indiana by the end of 2011, and the maintenance plans provide for maintenance through the end of 2021, it is evident that the Commenter's concern was misplaced, and that the maintenance plans do provide for a ten-year maintenance period in accordance with CAA section 175A.

Commment 4b: The Commenter asserts that the Ohio and Indiana maintenance plans are deficient in part because the contingency measures they include provide for their implementation within 18 months of a monitored violation, if one occurs. The Commenter claims that as a consequence, the ''contingency measures do not provide for prompt correction of violations.''

Response 4b: The Commenter overlooks the provisions of the CAA applicable to contingency measures. Section 175A(d) provides that ''[e]ach plan revision submitted under this section shall contain such contingency provisions as *the Administrator deems necessary* to assure that the state will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.'' (emphasis added). Thus Congress gave EPA discretion to evaluate and determine the contingency measures EPA ''deems necessary'' to assure that the state will promptly correct any subsequent violation. EPA has long exercised this discretion in its rulemakings on section 175A contingency measures in redesignation maintenance plans, allowing as contingency measures commitments to adopt and implement in lieu of fully

adopted contingency measures, and finding that implementation within 18 months of a violation complies with the requirements of section 175A. See recent redesignations, *e.g.* Indianapolis $PM_{2.5}$ annual standard (76 FR 59512), Lake and Porter 8-hour ozone standard (75 FR 12090), and Northwest Indiana $PM_{2.5}$ annual standard (76 FR 59600). Section 175A does not establish any deadlines for implementation of contingency measures after redesignation to attainment. It also provides far more latitude than does section 172(c)(9), which applies to a different set of contingency measures applicable to nonattainment areas. Section 172(c)(9) contingency measures must ''take effect * * * without further action by the State or [EPA].'' By contrast, section 175A confers upon EPA the discretion to determine what constitutes adequate assurance, and thus permits EPA to take into account the need of a state to assess, adopt implement contingency measures if and when a violation occurs after an area's redesignation to attainment. Therefore, in accordance with the discretion accorded it by statute, EPA may allow reasonable time for states to analyze data and address the causes and appropriate means of remedying a violation. In assessing what ''promptly'' means in this context, EPA also may take into account time for adopting and implementation of the appropriate measure. In the case of the Cincinnati-Hamilton area, EPA reasonably concluded that, 18 months constitutes a timeline consistent with prompt correction of a potential monitored violation. This timeframe also conforms with EPA's many prior rulemakings on acceptable schedules for implementing section 175A contingency measures.

Comment 4c: The Commenter asserts that the contingency measures contained in the maintenance plans are ''too vague''.

Response 4c: As discussed above in response to comment 4(b), the CAA does not specify the requisite nature, scope, specificity, or number of contingency measures to be included in a maintenance plan under section 175A. It is for EPA to determine whether the state has given adequate assurance that it can promptly correct a violation. Both Ohio and Indiana have submitted contingency measures that EPA deems adequate. They have committed to remedy a future violation, and have included measures to address potential violations from a range of sources and a timeline for promptly completing adoption and implementation. The states have identified measures that are sufficiently specific but which allow for latitude in potential scope. This will enable the states to address a range of potential sources and differing degrees and types of violations. EPA believes that the contingency measures set forth in the submittal, combined with the states' commitment to an expeditious timeline and process for implementation, provide assurance that the states will promptly correct a future potential violation. Given the uncertainty as to timing, degree and nature of any future violation, EPA believes that the contingency measures set forth adequately balance the need for flexibility in the scope and type of measure to be implemented with the need for expeditious state action.

Comment 5: The Commenter asserts that the Ohio and Indiana Startup, Shutdown, Malfunction, and/or Maintenance provisions (SSM) are inconsistent with the Act and EPA policy because they provide that excess emissions are not violations. The Commenter also claims that the regulation is ambiguous because it lacks procedural specifications indicating whether it is to be interpreted as a ''qualified exemption'' or an ''affirmative defense.'' In the second set of comments received, the Commenter asserts, ''The Ohio and Indiana SIPs contain impermissible provisions governing startup, shutdown, malfunctions and scheduled maintenance.''

Response 5: The CAA sets forth the general criteria for redesignation of an area from nonattainment to attainment in section 107(d)(3)(E). Specifically, that section identifies five criteria, including that ''the Administrator has fully approved the applicable implementation plan for the area under section 7410(k) of this title.'' 42 U.S.C. 7407(d)(3)(E)(ii). Although the Commenter does not specifically cite to section 107(d)(3)(E)(ii), the language used in the comment (''fully approved adequate SIP'') appears to derive from this section of the CAA (and the Commenter does later cite to section 107(d)(3)(E) in the concluding paragraph of the comment letter). As a preliminary matter, the issue before EPA in the current rulemaking action is a redesignation for the Ohio and Indiana portions of the Cincinnati-Hamilton area to attainment for the 1997 $PM_{2.5}$ standard, including the maintenance plan. The SIP provisions identified in the Commenter's letter are not currently being proposed for revision as part of the redesignation submittals. Thus, EPA's review here is limited to whether the already approved provisions affect any of the requirements for redesignation in a manner that would preclude EPA from approving the redesignation requests. Because the rules cited by the Commenter are not pending before EPA and/or are not the subject of this rulemaking action, EPA did not undertake a full SIP review of the individual provisions. It has long been established that EPA may rely on prior SIP approvals in approving a redesignation request plus any additional measures it may approve in conjunction with a redesignation action. *See e.g.,* page 3 of the September 4, 1992, John Calcagni Memorandum; *Wall* v. *EPA, 265 F.3d 426 (6th Cir. 2001); 68 FR 25413, 25426* (May 12, 2003).

Additionally, the comment inserted the word ''adequate'' into the phrase ''fully approved SIP'' (which is the language of Section 107(d)(3)(E)(ii)), such that the Commenter stated that Ohio and Indiana must have a ''fully approved adequate SIP.'' Clearly the word ''adequate'' is not included in Section 107(d)(3)(E)(ii), and its inclusion substantially alters the plain text of the CAA. Furthermore, while the Commenter opines that the cited-to provisions of the Ohio and Indiana rules result in a ''regulatory structure that is inconsistent with the fundamental requirement that all excess emissions be considered violations,'' Commenter does not link this concern with deficiencies in Ohio's and Indiana's redesignation submittals for the Ohio and Indiana portions of the Cincinnati-Hamilton area. There is no information in the comment indicating that Ohio or Indiana has excused violations and that such actions result in Ohio or Indiana failing to meet a requirement for redesignation. Furthermore, there is no information in the comment indicating that even if Ohio or Indiana were to excuse such violations that such violations would not be actionable by EPA or citizens. For Indiana's SIP, 326 IAC 1–6–4 was formerly codified as 325 IAC 1.1–5. When EPA approved that rule in 1984, it noted Indiana's clarification that any malfunction causing excess emissions would be treated as a SIP violation; and that the rule's criteria would be used in determining an appropriate enforcement response. (February 14, 1984, 49 FR 5618). This constitutes an ''enforcement discretion'' approach, acceptable under EPA's applicable policies. EPA also noted that it had independent authority under Section 113 of the CAA to determine whether enforcement discretion was an appropriate response in a particular case.

On June 30, 2011, Sierra Club filed a ''Petition to Find Inadequate and Correct Several State Implementation Plans under Section 110 of the Clean

Air Act Due to Startup, Shutdown, Malfunction, and/or Maintenance Provisions''. EPA has agreed to respond to this petition by August 31, 2012 as part of settlement of a lawsuit. *See Sierra Club et al.* v. *Jackson,* No. 3:10–cv–04060–CRB (N.D. Cal). At this time, with regards to the redesignation of the Ohio and Indiana portion of the Cincinnati-Hamilton area, EPA does not agree that the Commenter has raised a basis on which EPA could disapprove the redesignation. Ohio and Indiana have fully approved SIPs consistent with applicable requirements.

Comment 6a: The Commenter asserts that the Ohio SIP does not meet the requirement of section 107(d)(3)(E)(ii) because EPA has disapproved Ohio's ''good neighbor provision'' Section 110(a)(2)D)(i)(I).

Response 6a: The requirements applicable for purposes of redesignation are those which at a minimum are linked to the attainment status of the area being redesignated. As noted in the proposal (76 FR 64825), all areas, regardless of their designation as attainment or nonattainment, are subject to section 110(a)(2)(D). The applicability of this provision is not connected with nonattainment plan submissions or with the attainment status of an area. A nonattainment area remains subject to the requirements of section 110(a)(2)(D) after it has been redesignated to attainment. Therefore EPA has long interpreted the 110(a)(2)(D) requirements as not applicable requirement for purposes of redesignation. EPA has leeway to determine what constitutes an ''applicable'' requirement under section 107(d)(3)(E), and EPA's interpretation is entitled to deference. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

EPA has consistently interpreted only those section 110 requirements that are linked with a particular area's designation as the requirements to be considered in evaluating a redesignation request. See, *e.g.,* EPA's positions on the applicability of conformity, oxygenated fuels requirements for purposes of redesignations. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996, and 62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

Comment 6b: The Commenter contends that the Ohio and Indiana SIPs do not have approved RACT rules.

Response 6b: EPA interprets RACT for $PM_{2.5}$ as linked to attainment needs of the area. If an area is attaining the $PM_{2.5}$ standard, it clearly does not need further measures to reach attainment. Therefore, under EPA's interpretation of the RACT requirement, as it applies to $PM_{2.5,}$ Ohio and Indiana have satisfied the RACT requirement without need for further measures. On May 22, 2008, EPA issued a memorandum that clarified its position with respect to the relationship between $PM_{2.5}$ attainment and RACT requirements.

''Memorandum from William T. Harnett, Director, Air Quality Policy Division to Regional Air Division Directors, $PM_{2.5}$ Clean Data Policy Clarification.'' This memorandum explained that 40 CFR 51.1004(c) provides that a determination that an area that has attained the $PM_{2.5}$ standard suspends the requirements to submit RACT and RACM requirements.

Section 51.1010 provides in part: 'For each $PM_{2.5}$ nonattainment area, the state shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all reasonably available control measures (including RACT for stationary sources) necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.'

Thus the regulatory text defines RACT as included in RACM, and provides that it is required only insofar as it is necessary to advance attainment. See also section 51.1010(b). The Commenter claims that *Wall* v. *EPA,* 265 F.3d 426, 442 (6th Cir. 2001), establishes that fully adopted RACT is nonetheless required. The Wall case, however, is not applicable to RACT requirements for the $PM_{2.5}$ standard. The Wall decision addressed entirely different statutory provisions for ozone RACT under CAA Part D subpart 2, which do not apply or pertain to the subpart 1 RACT requirements for $PM_{2.5}$.

Comment 6c: The Commenter asserts that the Ohio and Indiana SIPs lack $PM_{2.5}$ nonattainment New Source Review (NSR) programs. The Commenter also contends that the prevention of significant deterioration (PSD) program is part of the SIP that an area being redesignated needs to have to ensure that the area will stay in attainment. The Commenter takes the position that EPA cannot approve the redesignation requests because Ohio and Indiana do not have adequate $PM_{2.5}$ PSD programs. The Commenter bases its conclusion that Ohio and Indiana's PSD programs are inadequate for $PM_{2.5}$ on the contention that the programs do not contain significant emission rates for $PM_{2.5}$ and its precursors, and that the programs do not include $PM_{2.5}$ increments.

Response 6c: Both Ohio and Indiana have approved nonattainment NSR programs in their SIPs. EPA approved Ohio's current NSR program on January 10, 2003 (68 FR 1366). EPA approved Indiana's current NSR program on October 7, 1994 (59 FR 51108). Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved NSR program for purposes of redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' The memo states, ''[EPA] * * * is establishing a new policy under which nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, provided the program is not relied upon for maintenance.'' In this case, neither Ohio nor Indiana has relied upon NSR to maintain the standard.

Ohio and Indiana also each have an EPA approved PSD program that includes $PM_{2.5}$ as a NSR pollutant. While the Commenter is correct in stating that both Ohio and Indiana's approved PSD SIPs do not include specific significant emissions rates for $PM_{2.5}$ or its precursors, the Ohio and Indiana SIPs do include a provision that sets ''any emission rate'' as the significant emission rate for any regulated NSR pollutant that does not have a specific significant emission rate listed in the state rule. Under Indiana's rule, a regulated NSR pollutant includes a pollutant, for which a NAAQS has been promulgated, and constituents or precursors for the pollutants identified as a NAAQS by EPA.

Therefore, any increase in direct $PM_{2.5}$ emissions or emissions of its precursors (SO_2 and NO_X) will trigger the requirements to obtain a PSD permit; to perform an air quality analysis that demonstrates that the proposed source or modification will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS; and to apply best available control technology (BACT) for direct $PM_{2.5}$ and/or the pertinent precursor.

In addition, the fact that Ohio's and Indiana's approved PSD SIPs lack $PM_{2.5}$ increments does not prevent the program from addressing and helping to

assure maintenance of the $PM_{2.5}$ standard in accordance with CAA section 175A. A PSD increment is the maximum increase in concentration that is allowed to occur above a baseline concentration for a pollutant. Even in the absence of an approved PSD increment, the approved PSD program prohibits air quality from deteriorating beyond the concentration allowed by the applicable NAAQS. Thus Ohio's and Indiana's approved PSD programs are adequate for purposes of assuring maintenance of the 1997 annual $PM_{2.5}$ standard as required by section 175A.

EPA notes that Indiana has adopted emergency rules containing significant emissions rates of 10 tons per year for direct $PM_{2.5}$ and 40 tons per year for sulfur dioxide and nitrogen oxide (as $PM_{2.5}$ precursors). The emergency rules also contain maximum allowable $PM_{2.5}$ increments of 4 micrograms per cubic meter ($\mu g/m^3$) for the annual standard and 9 $\mu g/m^3$ for the 24-hour standard.[4] The state is currently implementing the emergency rules at the state level and is in the process of adopting permanent rules for submission to EPA.

Irrespective of the state's emergency rules, EPA concludes that the features of Indiana's currently approved PSD program cited by the Commenter do not detract from the program's adequacy for purposes of maintenance of the standard and redesignation of the area. As it stands, the currently approved PSD program is sufficient for the purposes of maintaining the 1997 annual $PM_{2.5}$ NAAQS in the Cincinnati-Hamilton area.

IV. Why is EPA taking these actions?

EPA has determined that the Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ NAAQS. EPA has also determined that all other criteria have been met for the redesignation of the Ohio and Indiana portions of the Cincinnati-Hamilton area from nonattainment to attainment of the 1997 annual $PM_{2.5}$ NAAQS. *See* CAA section 107(d)(3)(E). The detailed rationale for EPA's findings and actions is set forth in the proposed rulemaking of October 19, 2011 (76 FR 64825) and in this final rulemaking.

V. Final Action

EPA has previously made the determination that the Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ standard (76 FR 60373). EPA is determining that the area continues to attain the standard and that the Ohio and Indiana portions of the area meet the requirements for redesignation to attainment of that standard under section 107(d)(3)(E) of the CAA. Thus, EPA is approving the requests from Ohio and Indiana to change the legal designation of their portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is approving Ohio's and Indiana's 1997 annual $PM_{2.5}$ maintenance plans for the Cincinnati-Hamilton area as revisions to the respective SIPs because the plans meet the requirements of section 175A of the CAA. EPA is approving the 2005 emissions inventories for primary $PM_{2.5}$, NO_X, and SO_2, documented in Indiana's and Ohio's December 9, 2010, and January 25, 2011, submittals as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving 2015 and 2021 primary $PM_{2.5}$ and NO_X MVEBs submitted from each state for the Ohio and Indiana portions of the Cincinnati-Hamilton area. These MVEBs will be used in future transportation conformity analyses for the area after the effective date for the adequacy finding and approval.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the Area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule—grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication—as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the Ohio and Indiana of various requirements for the Ohio and Indiana portions of the Cincinnati-Hamilton area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, these actions:

- Are not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

[4] EPA's redesignation action here addresses only the 1997 annual $PM_{2.5}$ standard, and does not address the 24-hour $PM_{2.5}$ standard.

application of those requirements would be inconsistent with the CAA; and,

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

In addition, this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks.

Dated: December 14, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.776 is amended by adding paragraphs (v)(3) and (w)(3) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(v) * * *

(3) The Indiana portion of the Cincinnati-Hamilton nonattainment area (Lawrenceburg Township in Dearborn County), as submitted on December 9, 2010. The maintenance plan establishes 2015 motor vehicle emissions budgets for the Ohio and Indiana portions of the Cincinnati-Hamilton area of 1,678.60 tpy for primary $PM_{2.5}$ and 35,723.83 tpy for NO_X and 2021 motor vehicle emissions budgets of 1,241.19 tpy for primary $PM_{2.5}$ and 21,747.71 tpy for NO_X.

(w) * * *

(3) Indiana's 2005 NOx, directly emitted $PM_{2.5}$, and SO_2 emissions inventory satisfies the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Cincinnati-Hamilton area.

Subpart KK—Ohio

■ 3. Section 52.1880 is amended by adding paragraphs (p) and (q) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(p) Approval—The 1997 annual $PM_{2.5}$ maintenance plans for the following areas have been approved:

(1) The Ohio portion of the Cincinnati-Hamilton nonattainment area (Butler, Clermont, Hamilton, and Warren Counties), as submitted on January 25, 2011. The maintenance plan establishes 2015 motor vehicle emissions budgets for the Ohio and Indiana portions of the Cincinnati-Hamilton area of 1,678.60 tpy for primary $PM_{2.5}$ and 35,723.83 tpy for NO_X and 2021 motor vehicle emissions budgets of 1,241.19 tpy for primary $PM_{2.5}$ and 21,747.71 tpy for NO_X.

(2) [Reserved]

(q) Approval—The 1997 annual $PM_{2.5}$ comprehensive emissions inventories for the following areas have been approved:

(1) Ohio's 2005 NOx, directly emitted $PM_{2.5}$, and SO_2 emissions inventory satisfies the emission inventory requirements of section 172(c)(3) for the Cincinnati-Hamilton area.

(2) [Reserved]

PART 81—[AMENDED]

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. Section 81.315 is amended by revising the entry for Cincinnati-Hamilton in the table entitled ''Indiana $PM_{2.5}$ (Annual NAAQS)'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA $PM_{2.5}$

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
* * * * * * *		
Cincinnati-Hamilton, IN: Dearborn County (part) Lawrenceburg Township	12/23/2011	Attainment.
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

■ 6. Section 81.336 is amended by revising the entry for Cincinnati-Hamilton, OH in the table entitled ''Ohio $PM_{2.5}$ (Annual NAAQS)'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO $PM_{2.5}$

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
* * * * * *		*
Cincinnati-Hamilton, Ohio:	12/23/2011	Attainment.
Butler County		
Clermont County		
Hamilton County		
Warren County		
* * * * * *		*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

[FR Doc. 2011–32818 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0080; FRL–9610–2]

RIN 2060–AR16

National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Prepared Feeds Manufacturing; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to revise certain provisions of the area source national emission standards for hazardous air pollutants (NESHAP) for prepared feeds manufacturing published on January 5, 2010 (final rule). These revisions will clarify the regulatory requirements for this source category and ensure that those requirements are consistent with the record. The revisions address the generally available control technology (GACT) requirements for pelleting processes at large, existing prepared feeds manufacturing facilities, specifically removal of the cyclone 95-percent design efficiency requirement, as well as associated requirements for compliance demonstration, monitoring, reporting, and recordkeeping; clarification of the requirement that doors be kept closed in areas where materials containing chromium and manganese are stored, used, or handled; and clarification of the requirement to install a device at the point of bulk loadout to minimize emissions. These amendments are not expected to result in increased emissions or in the imposition of costs beyond those described in the January 5, 2010, final rule.

DATES: This direct final rule is effective on February 21, 2012 without further notice, unless the EPA receives adverse comment by January 23, 2012. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or relevant provisions of this rule, will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0080, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov:* Follow the instructions for submitting comments.
- *Agency Web site: www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web site.
- *Email: a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2008–0080 in the subject line of the message.
- *Fax:* Send comments to (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2008–0080.
- *Mail:* Area Source NESHAP for Prepared Feeds Manufacturing Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0080. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments,

see Section III of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0080. All documents in the docket are listed in the Federal Docket Management System index at *www.regulations.gov.* Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Jan King, Outreach and Information Division, Office of Air Quality Planning and Standards (C404–05), Environmental Protection Agency, Research Triangle Park, NC 27711. Telephone number: (919) 541–5665; fax number: (919) 541–0242; email address: *king.jan@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Why is the EPA using a direct final rule?
II. Does this action apply to me?
III. What should I consider as I prepare my comments for the EPA?
A. Submitting CBI
B. Tips for Preparing Your Comments
IV. Where can I get a copy of this document?
V. What amendments are being made to this rule?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Why is the EPA using a direct final rule?

The EPA is publishing these amendments without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register,** we are publishing a separate document that will serve as the proposed rule to revise certain provisions of the final area source rule for prepared feeds manufacturing published on January 5, 2010, (75 FR 522) if adverse comments are received on this direct final rule. If we receive adverse comment on a distinct provision of this direct final rule, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on any other provision. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

As explained below, this action revises the generally available control technology (GACT) standard for pelleting operations at large, existing prepared feeds manufacturing facilities, specifically removal of the cyclone 95 percent design efficiency requirement, as well as associated requirements for compliance demonstration, monitoring, reporting, and recordkeeping; clarification of the requirement that doors be kept closed in areas where materials containing chromium and manganese are stored, used, or handled; and clarification of the requirement to install a device at the point of bulk loadout to minimize emissions.

II. Does this action apply to me?

Regulated Entities. The regulated categories and entities potentially affected by the rule include:

Category	NAICS code[1]	Examples of regulated entities
Other Animal Foods Manufacturing	311119	Animal feeds, prepared (except dog and cat), manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11619, subpart DDDDDDD (NESHAP for Area Sources: Prepared Feeds Manufacturing). If you have any questions regarding the applicability of this action to a particular entity, consult either the state delegated authority or the EPA regional representative, as listed in 40 CFR 63.13 of subparts A (General Provisions).

[1] North American Industry Classification System.

III. What should I consider as I prepare my comments for the EPA?

A. *Submitting CBI.* Do not submit this information to the EPA through *http://www.regulations.gov* or email. Clearly mark all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (e.g., subject heading, **Federal Register** date and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
• Provide specific examples to illustrate your concerns, and suggest alternatives.
• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
• Make sure to submit your comments by the comment period deadline identified.

IV. Where can I get a copy of this document?

Electronic Access. In addition to being available in the docket, an electronic copy of this direct final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Because this is an amendment of regulatory language through rulemaking, a redline version of the regulatory language has been created and has been placed in the docket (*http://www.regulations.gov,* see Docket No. EPA–HQ–OAR–2008–0080) to aid the public's ability to comment on the regulatory text. Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

V. What amendments are being made to this rule?

On January 5, 2010 (75 FR 522), the EPA promulgated the NESHAP for area source prepared feeds manufacturing facilities as subpart DDDDDDD in 40 CFR part 63. Existing affected sources (i.e., construction or reconstruction of the facility began on or before July 27, 2009) must comply with the rule by January 5, 2012, while new affected sources (i.e., construction or reconstruction of the facility began after July 27, 2009) were required to comply by January 5, 2010, or upon startup, whichever is later.

Today's action consists of three revisions and clarifications. The rule requires that pelleting operations at large, prepared feeds manufacturing facilities (i.e., those facilities with an average daily feed production level exceeding 50 tons per day) use cyclones. In the final rule, these cyclones were required to have a 95-percent design efficiency. This action revises this requirement for existing sources only.[2] Such sources must use cyclones, and those cyclones must be operated in accordance with good air pollution control practices and manufacturer's specifications and operating instructions, if available, or standard operating procedures must be developed by the facility owner or operator to ensure proper operation and maintenance of the cyclone.

In the preamble to the final rule, we recognized that the cyclones employed on pelleting operations at existing, large prepared feeds manufacturing facilities were generally available and provided effective Hazardous Air Pollutant (HAP) emissions control (75 FR 533). We added the 95-percent design efficiency requirement in the final rule because we thought, based on limited data from sources that did not have cyclones, that a large percentage of existing cyclones at large facilities already met that design efficiency (75 FR 544). In assessing the costs of the design efficiency requirement, as part of our GACT analysis, we estimated that few existing sources (approximately 2 percent) did not have cyclones and would need to install them to meet the requirement (Economic Impact Analysis for the Prepared Feeds Manufacturing Area Source NESHAP, June 17, 2009, Docket No. EPA–HQ–OAR–2008–0080–0036). We also explained in the final rule that it was not our intent to force prepared feed manufacturers to replace older, well-designed, and properly operating cyclones with new high-efficiency cyclones (75 FR 533). Indeed, we recognized that requiring the replacement of older, well designed, properly operating cyclones was not cost effective, because the incremental emission reductions would be very low and the costs would be high (75 FR 533).

The EPA included in the final rule three different mechanisms by which a source could demonstrate compliance with the design efficiency requirement. 40 CFR 63.11621(e)(1)–(3). A source could show compliance by having either cyclone manufacturer certification/specifications, a certification by a professional engineer or responsible official, or a Method 5 performance test that indicates whether PM is being released from the system (Appendix A to part 60) (which determines the particulate matter mass rate at the inlet and outlet of the cyclone). The EPA has recently learned that most existing sources would need to install new cyclones to provide the required documentation for demonstrating compliance with the final rule. (Material presented by prepared feeds industry representatives at the January 25, 2011, meeting with EPA staff, and Request for Administrative Stay and Reconsideration—June 10 2011, both of which are included in Docket No. EPA–HQ–OAR–2008–0080). That was not the intent of the final rule, and this result cannot be reconciled with the GACT analysis underlying the final rule.

As noted above, we premised the design efficiency requirement in the final rule for existing sources on the assumption that all but a few cyclones were meeting that requirement and that only a few sources would need to install new cyclones. Our cost analysis in the final rule tracked this assumption. We now recognize that this assumption was incorrect, and that our regulations, as written, would require many existing facilities to replace existing cyclones, which is contrary to our GACT analysis. As explained in the final rule, the replacement of older, well designed, properly operating cyclones is not cost effective (75 FR at 533). We are therefore revising the requirement of the final rule for pelleting operations at existing large prepared feeds manufacturing facilities (i.e., those facilities with an average daily feed production level exceeding 50 tons per day) to require the use of cyclones. We are also requiring that the cyclones be operated in accordance with good air pollution control practices and manufacturer's specifications and operating instructions, if available, or standard operating procedures must be developed by the facility owner or operator to ensure proper operation and maintenance of the cyclone. These revisions are wholly consistent with the record supporting the final rule, including the cost analysis and our determination that cyclones are generally available for existing sources and effectively control HAP emissions.

Further, the EPA is revising the requirements for demonstration of compliance, monitoring, and the notification, reporting and recordkeeping requirements for existing sources only, consistent with the removal of the design efficiency requirement for those sources. This rule would amend the notification of compliance status requirements such that the cyclone manufacturer's operating specifications or standard operating procedures developed by the prepared feeds manufacturer be required as part of the record instead of one of the cyclone parameters as specified in the final rule (i.e., inlet flow rate, inlet velocity, pressure drop, or fan

[2] We are not changing any requirements for new large, prepared feeds manufacturing facilities. We have amended the regulatory text to clarify that the design efficiency requirement and associated compliance mechanisms, monitoring, reporting, and recordkeeping requirements apply only to new sources.

amperage range). The revised annual compliance certification would include all instances when the cyclone does not operate according to manufacturer specifications or the standard operating procedures. This would replace the requirement for existing sources to include in the annual compliance certification the cyclone parameters listed in the final rule. We are also revising the recordkeeping requirements for existing sources to require the owner or operator to record the results of weekly visual inspections. This would replace the requirement in the January 5, 2010, final rule for existing sources to record the daily inlet flow rate, inlet velocity, pressure drop, or fan amperage.

This action also clarifies that the requirement to keep doors closed in areas where materials containing manganese and chromium are stored, used, or handled does not apply to areas where finished prepared feeds product is stored in closed containers, since there are no HAP emissions in these areas. See 40 CFR 63.11621(a)(iii).

Finally, there has been some confusion regarding the type of device needed to comply with the bulk loadout provision at 40 CFR 63.11621(d). These amendments clarify that any type of device may be used to minimize the distance between the place where bulk loadout occurs and the vehicle being loaded. The distance may also be minimized by the design of the loadout process itself (e.g., the loadout arm positioned directly above the vehicle being loaded).

These revisions and clarifications will become effective on February 21, 2012 without further notice, unless EPA receives adverse comment by January 23, 2012. If we receive adverse comment on a distinct provision of this direct final rule, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on any other provision.

VI. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden above that required in the original rule. The revisions do not require additional information collection requirements and may result in an overall reduction of the information collection burden. Therefore, the information collection requests are not being amended. The Office of Management and Budget (OMB) previously approved the information collection request (ICR) contained in the existing regulations (subpart DDDDDDD, 40 CFR part 63) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0635 (ICR 2354.02). The OMB control numbers for EPA's regulations in 40 CFR are listed in part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations found at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This action does not impose any additional costs over those in the final rule published on January 5, 2010 (75 FR 522). In fact, the clarifications contained in this action are expected to reduce costs for some small businesses that would otherwise have installed control equipment, but that would not be required to do so as a result of these amendments.

D. Unfunded Mandates Reform Act

This action contains no Federal mandate under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments, or the private sector. This action imposes no enforceable duty on state, local, or tribal governments, or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action imposes no obligations upon them.

E. Executive Order 13132: Federalism

This direct final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule does not impose any requirements on state and local governments. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This direct final rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This action is not subject to EO 13045 because it is based solely on technology performance.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22,

2001) because it is not a significant regulatory action under Executive Order 12886.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This direct final rule makes revisions and clarifications to the rule and should not result in increased emissions beyond those described in the final rule.

K. Congressional Review Act

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

List of Subjects for 40 CFR Part 63

Environmental protection, Particulate matter, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 15, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is amending 40 CFR, part 63, as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart DDDDDDD—[Amended]

■ 2. Amend § 63.11621 as follows:
■ a. By revising the introductory text.
■ b. By revising paragraph (a)(1)(iii).
■ c. By revising paragraph (d).
■ d. By revising paragraph (e) introductory text.
■ e. By adding paragraph (f).

§ 63.11621 What are the standards for new and existing prepared feeds manufacturing facilities?

You must comply with the management practices and standards in paragraphs (a) through (d) of this section at all times. For pelleting operations at prepared feeds manufacturing facilities with an average daily feed production level exceeding 50 tons per day, you must also comply with the requirements in paragraph (e) of this section at all times if you are a new source, and if you are an existing source, you must also comply with the requirements in paragraph (f) of this section at all times.

(a) * * *

(1) * * *

(iii) You must keep exterior doors in the immediate affected areas shut except during normal ingress and egress, as practicable. This paragraph (a)(1)(iii) does not apply to areas where finished product is stored in closed containers, and no other materials containing chromium or manganese are present.

* * * * *

(d) For the bulk loading process where materials containing chromium or manganese are loaded into trucks or railcars, you must lessen fugitive emissions by reducing the distance between the loadout spout and the vehicle being loaded by either paragraph (d)(1) or (d)(2) of this section.

(1) Use a device of any kind at the bulk loadout spout that minimizes the distance to the vehicle being loaded.

(2) Use any other means to minimize the distance between the loadout spout and the vehicle being loaded.

(e) For the pelleting operations at new prepared feeds manufacturing facilities with an average daily feed production level exceeding 50 tons per day, you must capture emissions and route them to a cyclone designed to reduce emissions of particulate matter by 95 percent or greater. You must also comply with the provisions in paragraphs (e)(1) through (3) of this section.

* * * * *

(f) For the pelleting operations at existing prepared feeds manufacturing facilities with an average daily feed production level exceeding 50 tons per day, you must capture emissions and route them to a cyclone. The cyclone must be maintained in accordance with good air pollution control practices and manufacturer's specifications and operating instructions, if available. If manufacturer's specifications and operating instructions are not available, you must develop and follow standard operating procedures that ensure proper operation and maintenance of the cyclone.

■ 3. Amend § 63.11622 by revising paragraph (b) to read as follows:

§ 63.11622 What are the monitoring requirements for new and existing sources?

* * * * *

(b) If you own or operate an affected source required by § 63.11621(e) or (f) to install and operate a cyclone to control emissions from pelleting operations, you must comply with the inspection and monitoring requirements in paragraphs (b)(1) and either (b)(2) or (b)(3) of this section, as applicable.

(1) You must perform quarterly inspections of the cyclone for corrosion, erosion, or any other damage that could result in air in-leakage, and record the results in accordance with § 63.11624(c).

(2) If you own or operate a new source, you must monitor inlet flow rate, inlet velocity, pressure drop, or fan amperage at least once per day when the pelleting process is in operation. You must also record the inlet flow rate, inlet velocity, pressure drop, or fan amperage in accordance with § 63.11624(c)(4).

(3) If you own or operate an existing source, you must perform a weekly visual inspection of the operating cyclone to ensure it is operating consistent with good air pollution control practices.

■ 4. Amend § 63.11624 as follows:
■ a. By revising paragraphs (a)(2)(iii) and (a)(2)(iv).
■ b. By adding paragraph (a)(2)(v).
■ c. By revising paragraphs (b)(4), (b)(5) and (b)(6).
■ d. By adding paragraph (b)(7).
■ e. By revising paragraphs (c) introductory text, (c)(4) introductory text, (c)(5), (c)(6), (c)(7), and (c)(8).
■ f. By adding paragraph (c)(9).

§ 63.11624 What are the notification, reporting, and recordkeeping requirements?

(a) * * *

(2) * * *

(iii) If you own or operate a new source required by § 63.11621(e) to install and operate a cyclone to control emissions from pelleting operations, the inlet flow rate, inlet velocity, pressure drop, or fan amperage range than constitutes proper operation of the cyclone determined in accordance with § 63.11621(e)(2).

(iv) If you own or operate an existing source required by § 63.11621(f) to install and operate a cyclone to control emissions from pelleting operations, documentation of what constitutes proper operation of the cyclone determined in accordance with § 63.11621(f).

(v) If you own or operate an affected source that is not subject to a requirement in § 63.11621(e) or (f) to install and operate a cyclone to control emissions from pelleting operations because your initial average daily feed production level was 50 tpd or less, documentation of your initial daily pelleting production level determination.

(b) * * *

(4) If you own or operate a new source that is subject to § 63.11621(e), you must identify all instances when the daily inlet flow rate, inlet velocity, pressure drop, or fan amperage is outside the range that constitutes proper operation of the cyclone submitted as part of your Notification of Compliance Status. In these instances, include the time periods when this occurred and the corrective actions taken.

(5) If you own or operate an existing source that is subject to § 63.11621(f), you must identify all instances when the cyclone was not operating properly as determined in accordance with § 63.11621(f).

(6) If you own or operate an affected source that is not subject to a requirement in § 63.11621(e) or (f) to install and operate a cyclone to control emissions from pelleting operations because your average daily feed production level was 50 tpd or less, notification if your average daily feed production level for the previous year exceeded 50 tpd.

(7) If you own or operate an affected source that was subject to a requirement in § 63.11621(e) or (f) to install and operate a cyclone to control emissions from pelleting operations, notification if your average daily feed production level for the previous year was 50 tpd or less and that you are no longer complying with § 63.11621(e) or (f).

(c) *Records.* You must maintain the records specified in paragraphs (c)(1) through (6) of this section in accordance with paragraphs (c)(7) through (9) of this section.

* * * * *

(4) If you own or operate a new source that is subject to § 63.11621(e), you must keep the records in paragraphs (c)(4)(i) through (v) of this section.

* * * * *

(5) If you own or operate an existing source that is subject to § 63.11621(f), you must keep the records in paragraphs (c)(5)(i) and (ii) of this section.

(i) Records of all quarterly inspections including the information identified in paragraphs (c)(5)(i)(A) through (C) of this section.

(A) The date, place, and time of each inspection;

(B) Person performing the inspection;

(C) Results of the inspection, including the date, time, and duration of the corrective action period from the time the inspection indicated a problem to the time of the indication that the cyclone was restored to proper operation.

(ii) Records of weekly visual inspections of the operating cyclone, including a record of any corrective action taken as a result of the inspection.

(6) If you own or operate an affected source that is not subject to a requirement in § 63.11621(e) or (f) to install and operate a cyclone to control emissions from pelleting operations because your average daily feed production level is 50 tpd or less, feed production records to enable the determination of the average daily feed production level.

(7) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(8) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(9) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

* * * * *

[FR Doc. 2011–32835 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA886

Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component of the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the 2011 total allowable catch (TAC) of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 27, 2011, through December 31, 2011. Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 4, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0283, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit

comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0293 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.

• *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA under § 679.20(d)(1)(iii) on October 9, 2011 (76 FR 63564, October 13, 2011).

As of December 15, 2011, NMFS has determined that approximately 1,390 metric tons remains in the directed fishing allowance for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2011 TAC of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening in the Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 16, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 4, 2012.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 20, 2011.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–32932 Filed 12–20–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 247
Friday, December 23, 2011

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

RIN 3206–AL88

Pay for Senior-Level and Scientific or Professional Positions

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) proposes to amend rules for setting and adjusting pay of senior-level (SL) and scientific or professional (ST) employees. The Senior Professional Performance Act of 2008 changes pay for these employees by providing for rates of basic pay up to the rate payable for level III of the Executive Schedule (EX–III), or, if the employee is under a certified performance appraisal system, the rate payable for level II of the Executive Schedule (EX–II). Consistent with this statutory emphasis on performance-based pay, these regulations will provide for agencies to set and adjust pay for SL and ST employees based on individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance appraisal system.

DATES: OPM must receive comments on or before February 21, 2012.

ADDRESSES: You may submit comments, identified by ''RIN 3206–AL88,'' by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E- mail: sespolicy@opm.gov. Include ''RIN 3206–AL88'' in the subject line of the message.

Fax: (202) 606–2548.

Mail, Hand Deliver/Courier comments: Mr. Stephen Shih, Deputy Associate Director for Executive Resources and Employee Development, Room 7412, 1900 E Street NW., Washington, DC 20415–9700.

FOR FURTHER INFORMATION CONTACT: William Collins by telephone at (202) 606–1642, by FAX at (202) 606–2548, or by email at *william.collins@opm.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to revise the rules that govern pay setting for senior-level (SL) and scientific or professional (ST) employees. The proposed regulations conform to amendments made by section 2 of the Senior Professional Performance Act of 2008 (Pub. L. 110–372, October 8, 2008), hereafter referred to as the ''Act.'' Section 2 of the Act amends provisions in 5 U.S.C. chapter 53 relating to the SL/ST pay system and locality rates. These amendments became effective on the first day of the first pay period beginning on or after April 6, 2009—*i.e.,* April 12, 2009.

The changes made by the Act and these proposed regulations are designed to bring the pay system for SL and ST employees more in line with the pay system for the Senior Executive Service (SES). The Act raises the maximum rate of basic pay in the SL/ST pay range from the rate for level IV of the Executive Schedule (EX) to the rate for EX–III ($165,300 in 2010). The minimum rate of basic pay in the new SL/ST pay system continues to be 120 percent of the minimum rate of basic pay payable for GS–15 ($119,554 in 2010).

The amended 5 U.S.C. 5376 allows an agency to establish a higher maximum rate of basic pay in the SL/ST rate range, equal to the rate for EX–II ($179,700 in 2010), if the agency obtains the certification under 5 U.S.C. 5307(d) of its performance appraisal system for employees in SL or ST positions. A certified SL/ST appraisal system makes meaningful distinctions based on relative performance. In addition, agencies that obtain such certification must apply to their SL and ST employees a higher aggregate limitation on pay under 5 U.S.C. 5307(d) that is equivalent to the total annual compensation payable to the Vice President ($230,700 in 2010). (The legislation authorizing the higher aggregate limitation was enacted in 2002.) The regulations prescribing the substantive and procedural requirements that an agency must meet to receive such certification for these purposes are in 5 CFR part 430, subpart D.

The Senior Professional Performance Act of 2008 and the later Non-Foreign Area Retirement Equity Assurance (AREA) Act (as contained in the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84, October 28, 2009)) both amended 5 U.S.C. 5304 concerning locality-based comparability payments for SL and ST employees. The Senior Professional Performance Act of 2008 removed all SL and ST positions from the list of positions for which locality-based comparability payments may be extended. However, the Non-Foreign AREA Act subsequently authorized extending locality pay to only those SL and ST employees whose official worksite was in one of the nonforeign areas listed in 5 CFR 591.205 on one specific date, January 2, 2010. Therefore, those SL and ST employees whose official worksites were in nonforeign areas on January 2, 2010, are entitled to receive the locality pay rate for that area, subject to the applicable locality rate cap established by 5 U.S.C. 5304(g)—*i.e.,* EX–II if the employee is covered by an appraisal system certified under 5 U.S.C. 5307(d), or EX–III if not so covered—and other provisions of the Non-Foreign AREA Act. Employees who are assigned to vacant SL or ST positions in the nonforeign areas on or after January 3, 2010, are not eligible for locality payments. Employees in SL or ST positions in the continental United States are also not authorized to receive locality pay on or after April 12, 2009 (the effective date of section 2 of the Senior Professional Performance Act of 2008). We issued conforming changes to the locality pay regulations at 5 CFR part 531, subpart F, to reflect the most recent amendments to 5 U.S.C. 5304(h) on June 7, 2011. (See 76 FR 32859.)

Conversion to the New SL/ST Pay System

Consistent with section 2(d) of the Act, agencies converted SL and ST employees to the new SL/ST pay system on April 12, 2009. OPM issued guidance to agencies addressing this conversion in Compensation Policy Memorandum 2009–06 on April 2, 2009. An SL or ST employee's converted rate of basic pay was the employee's former rate of basic pay, plus any applicable locality pay, in effect on April 11, 2009. For example,

on April 11, 2009, an SL employee who was at the maximum of the SL/ST rate range and had an official worksite in a locality pay area received a rate of basic pay of $153,200 (*i.e.,* EX–IV) and a locality payment of $9,700 for a total rate of $162,900. (The difference between the rate for EX–III and EX–IV was $9,700; EX–III was the cap on locality rates for SL and ST employees on April 11, 2009.) The SL employee's converted rate of basic pay was set at $162,900 on April 12, 2009. The newly converted SL or ST rate became the SL or ST employee's rate of basic pay for all pay computation purposes, and the existing pay plan codes ''SL'' for senior-level employees and ''ST'' for scientific or professional employees were retained.

Since conversion was mandated by section 2(d) of the Act, individual conversion actions were effected without regard to conflicting provisions of 5 CFR part 534, subpart E. For example, the new EX–III pay maximum established under section 2(b) of the Act overrode the conflicting EX–IV pay maximum in 5 CFR 534.502(b). The statutory requirement for conversion on April 12, 2009, overrode the 12-month limit on pay adjustments in 5 CFR 534.503(c). However, regulatory provisions not in conflict with the new statute continued in force. For example, since the 12-month limit in 5 CFR 534.503(c) did not contain an exception for pay adjustments due to conversion under section 2(d) of the Act, most conversion pay adjustments initiated a new 12-month waiting period for affected SL and ST employees.

Certain SL and ST employees had an official worksite on April 11, 2009, that was outside the 48 contiguous States and the District of Columbia: *i.e.,* their worksites were overseas or in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, or another U.S. territory or possession where locality pay was not authorized. These employees converted to the new SL/ST pay system at their rate of basic pay (exclusive of any locality rate of pay) on April 12, 2009. Since their rate of basic pay did not change, the conversion did not initiate a new 12-month limit for those employees.

Rules for the New Pay System

Congress first provided for certification of performance appraisal systems under section 1322 of Public Law 107–296, the Homeland Security Act of 2002 (November 25, 2002), and applied it to both SES and SL/ST performance appraisal systems. Upon certification, an agency could apply a higher aggregate pay cap, *i.e.,* the Vice President's salary rather than level I of the Executive Schedule, to an SES, SL or ST employee covered by the certified appraisal system. Subsequently, under section 1125 of Public Law 108–136 (November 24, 2003), Congress established the open range SES pay system with maximum pay caps of EX–III or EX–II, depending on whether a performance appraisal system is certified, and provided that a senior executive's pay shall be based on individual performance, contribution to the agency's performance, or both.

To implement the congressional design, OPM and OMB jointly published interim regulations at 5 CFR part 430, subpart D, and part 1330, subpart D, to govern certification of agency appraisal systems as making meaningful distinctions based on relative performance. (See 69 FR 45548.) Certification was based on nine criteria identified in 5 CFR 430.404(a)(1) through (9), notably including performance differentiation and pay differentiation, such that senior employees (*i.e.,* SES, SL or ST) who demonstrate the highest levels of individual performance and/or contribution to the agency's performance receive the highest annual summary ratings or ratings of record, as applicable, as well as the largest corresponding pay adjustments, cash awards, and levels of pay. The same criteria were to be applied in certifying SES appraisal systems and SL/ST appraisal systems.

Under the Senior Professional Performance Act of 2008, Congress now also makes higher rates of basic pay available to SL and ST employees based upon the certification of performance appraisal systems. Congress does so without stating directly, as the SES statute does, that pay for SL and ST employees is to be based on individual performance, contribution to the agency's performance, or both (compare 5 U.S.C. 5376(b) with 5 U.S.C. 5382). The legislative history stated the principal purpose of the underlying bill is to bring the pay system for SL and ST personnel into line with that for SES members by eliminating locality pay and authorizing an agency to use a level III or level II pay ceiling, depending upon whether the agency appraisal system is certified. S. Rep. No. 110–328, 110th Cong., 2nd Sess. (April 22, 2008). Given the context of certification, as implemented by OPM and OMB, and the SES pay rules, OPM concludes that SL and ST pay should also be based upon individual performance, contributions to the agency's performance, or both. We propose to regulate accordingly.

The pay system established at 5 U.S.C. 5376 by the Federal Employees Pay Comparability Act of 1990 (FEPCA), Public Law 101–509 (November 5, 1990) did not impose a 12-month restriction on pay adjustments for SL and ST employees, even though 5 U.S.C. 5383 imposed a 12-month restriction on SES pay adjustments that could not be waived. OPM initially planned to let each agency decide whether to impose a similar limit on pay adjustments for SL and ST employees; however, all but one of the agencies we consulted recommended establishing a 12-month limit by regulation. Accordingly, OPM imposed a 12-month restriction on the SL/ST pay system consistent with the SES pay rules. Then, in establishing the open range SES pay system that became effective for most senior executives on January 11, 2004, Congress continued the 12-month restriction for senior executives but authorized OPM to provide for exceptions by regulation.

OPM is now proposing to remove the current regulatory 12-month restriction on pay adjustments for SL and ST employees because Congress has revised the SL/ST pay system and again has not imposed such a restriction. On April 12, 2009, more than 60 percent of SL and ST employees converted to the new SL/ST system with a basic pay rate equal to EX–III because their rates of basic pay plus locality pay as of April 11, 2009, were equal to the EX–III maximum permitted under the former pay system. In place of the 12-month rule, we propose new rules that require the following: (1) Determining SL and ST pay adjustments based on individual performance, contributions to the agency's performance, or both; (2) for agencies with ten or more senior professionals, centralized review of proposed pay adjustments; and (3) approval of the highest level SL and ST pay adjustments and of off-cycle pay adjustments under proposed 5 CFR 534.510 by the agency head or the designee who oversees the performance-based pay system.

Under section 5376(b)(2), an agency head is still required to adjust rates of basic pay for SL and ST positions as the agency head considers appropriate at the same time statutory pay adjustments are provided for the General Schedule, which is not required for SES positions. Currently, OPM does not restrict the amount of this adjustment but provides that an annual adjustment that exceeds the higher of the adjustments proposed for the General Schedule (GS) or EX pay systems is a pay adjustment for purposes of the 12-month restriction.

OPM now proposes to eliminate the 12-month restriction.

The date specified in law for the annual adjustment, *i.e.,* the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under 5 U.S.C. 5303 in the rates of basic pay under the General Schedule, usually coincides with adjustments in Executive Schedule pay rates and is regularly used by most agencies to provide performance-based pay increases for appraisal periods ending on or about September 30 of the preceding year. OPM therefore proposes in 5 CFR 534.505(b) that each agency must include in its written procedures a requirement to adjust each SL or ST employee's pay under proposed 5 CFR 534.507(b), which would prescribe rules for performance-based pay increases, on the date specified by 5 U.S.C. 5376(b)(2).

Definition of Terms

Our proposed definition of ''agency'' in 5 CFR 534.503 reflects that under 5 U.S.C. 5108 OPM determines the maximum number of SL positions that may be established in an Executive agency, and under 5 U.S.C. 3104 OPM determines the maximum number of ST positions in any agency, except for the Library of Congress, which also may establish eight ST positions under 5 U.S.C. 3104. The definitions ''SL employee'' and ''ST employee'' do not include incumbents of SL-equivalent or ST-equivalent positions established or compensated under other statutory authority. We consider this necessary because OPM lacks authority to regulate the pay system for such employees who are not compensated under 5 U.S.C. 5376.

OPM is proposing to define the term ''authorized agency official'' in 5 CFR 534.503 as meaning the agency head or an individual authorized to act for the agency head in the matter concerned. These officials are to be defined in written procedures established by an agency under 5 CFR 534.505. We are also proposing restrictions on who may be delegated authority to take certain pay actions under 5 CFR 534.505(c) and 5 CFR 534.506(c).

We propose to define ''certified'' as having the certification that OPM, with OMB concurrence, provides to a performance appraisal system that makes meaningful distinctions based upon performance. This means that when OPM suspends a performance appraisal system certification, that system is ''not certified'' (also defined in 5 CFR 534.503) for as long as the suspension continues. Under proposed regulations at 5 CFR 534.507(d), any rating of record or performance rating must cover a period of performance lasting at least 90 days during which the applicable performance appraisal system is certified in order to support an increase to a rate of basic pay above level III but equal to or below level II of the Executive Schedule. A suspension could therefore affect an agency's ability to grant such pay increases on a timely basis.

We propose to define the term ''movement'' to include any assignment from one SL or ST position to another SL or ST position, whether within or between the competitive and excepted services or within or between agencies, provided that the applicable requirements for the specific assignment are met. Within this broader category, the term ''transfer'' is more narrowly defined to mean any movement that is a change of a senior professional employee from an SL or ST position in one agency to an SL or ST position in another agency without a break in service of at least 1 full workday. We define ''transfer'' separately to clarify circumstances under which 5 CFR 534.509(a) requires preserving a rate of basic pay above EX–III but less than or equal to EX–II. If the movement is between agencies without a break in service of at least 1 full workday, it does not matter whether the senior professional position to which the individual transfers is SL or ST or whether it is in the competitive service or excepted service.

We propose to define the term ''performance management system'' to include, in addition to an agency's performance appraisal system for SL and ST employees, other disciplines and activities by which the agency implements performance management. As described in 5 CFR 430.102, performance management is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals. This includes processes required to address the criteria for certification of a performance appraisal system defined in 5 CFR 430.404(a)(1) through (9). It also includes development of an agency's Strategic Human Capital Plan and may include other processes used by an agency to define and address its performance requirements. Performance appraisal does not occur in isolation but within the broader context of performance management activities by which an agency identifies, prioritizes, defines, measures and values work to be done and results to be achieved. Our proposed regulations are based on the assumption that an agency developing pay policies and criteria and determining pay adjustments does so within that broader context.

Setting Pay Upon Appointment to a New SL or ST Position

The proposed regulations in 5 CFR 534.506 treat pay setting separately from pay increases and include, in addition to pay setting for an individual upon initial appointment to an SL or ST position, pay setting for a current SL or ST employee upon transfer to a new agency and pay setting upon reappointment or reinstatement of a former SL or ST employee to an SL or ST position in any agency. Consistent with the SES pay rules, we provide that an agency must consider the nature and quality of the individual's experience, qualifications and accomplishments as they relate to requirements of the senior professional position and its impact on the agency's performance, with pay rates above EX–III but equal to or below EX–II being reserved to those individuals who possess superior competencies necessary to address key program and mission requirements, as determined by the agency.

In general, pay may be set at any rate within the applicable rate range under 5 CFR 534.504(a). There is one exception, in that 5 U.S.C. 5376(b)(4) precludes an employee from suffering a reduction in pay by reason of transfer from an agency with an applicable appraisal system that is certified to an agency in which the applicable appraisal system is not certified. This is reflected in 5 CFR 534.506(b) and 5 CFR 534.509(a), which would require preservation of an employee's rate of basic pay above EX–III but less than or equal to EX–II in this circumstance. We are also proposing to require that an individual who leaves an agency and is reappointed to the same or a successor position in that agency within 30 days may not receive a higher rate of basic pay, unless the agency head or the designee responsible for the functions identified in 5 CFR 430.404(a)(6) determines it is warranted.

Annual Increases in Basic Pay

We are proposing a heading for 5 CFR 534.507 that refers to increases in a rate of basic pay rather than pay adjustments. References to pay adjustments could be read as including reductions in pay. Pay reductions for SL and ST positions are taken under 5 CFR part 752, subpart D. Rules in proposed 5 CFR part 534, subpart E, therefore generally relate to setting and increasing a rate of basic pay, and 5 CFR 534.508

refers the reader to 5 CFR part 752, subpart D, for reductions in pay or grade for such cause as will increase the efficiency of the service, or to 5 CFR part 432, for performance-based reductions in grade.

OPM proposes to provide that pay increases under 5 CFR 534.507(b) must be based upon individual performance, contributions to agency performance, or both, as determined by the agency under a rigorous performance management system. As under SES pay rules, rates above EX–III but equal to or below EX–II would be reserved for those senior professionals who demonstrate the highest-level performance and make the greatest contributions to agency performance.

Generally, it is our view that an SL or ST employee rated fully successful and properly positioned within the pay range should at least receive an increase that helps preserve the economic value of his or her salary. This kind of increase is often provided through annual adjustments to statutory pay systems. Accordingly, we are proposing under 5 CFR 534.507(h) that in any year in which General Schedule pay rates are increased under 5 U.S.C. 5303, an agency head who decides on a ''zero'' annual pay adjustment for a senior professional rated fully successful or above must communicate the reasons for that decision to the senior professional in writing; however, for a senior professional paid within the top 10% of the applicable pay range this communication would be required only if Executive Schedule pay rates are also increased under 5 U.S.C. 5318 and the senior professional is rated outstanding. We propose that this written communication requirement may not be construed to require a pay increase for any senior professional. OPM is not proposing an appeal right or opportunity because we understand the statute to give the agency head authority to provide the annual adjustment he or she considers appropriate. We also propose that a senior professional employee rated below fully successful may not receive a pay increase except an increase required to maintain the minimum rate of basic pay. Note that 5 CFR 451.104(a)(3) already precludes a rating-based performance award for an employee whose most recent rating of record is below fully successful.

Although the higher maximum pay cap applies only to SL or ST employees covered by a certified performance appraisal system, changes made by the Act increase every agency head's authority and discretion over SL/ST pay whether or not an applicable performance appraisal system is certified. Formerly, senior professionals given different rates of basic pay by an agency head could end up with the same total salary, *i.e.,* a rate equivalent to EX–III, due to locality pay being added up to the (EX–III) cap on basic pay plus locality pay. In effect, more locality pay was automatically added to the salaries of senior professionals with lower rates of basic pay, including senior professionals who demonstrated relatively lower levels of performance. Locality pay could have a proportionally greater impact on total salary of some senior professionals with lower rates of pay and lesser performance than it did for other senior professionals with higher rates of basic pay and greater performance. Even if an agency head could directly relate performance to basic pay, the relationship of performance to total pay was ambiguous and could only be managed indirectly. Under the new pay system, each agency head has authority over the entire SL/ST pay range and can assign each senior professional the rate of basic pay that reflects the agency head's valuation of that senior professional's service to the agency.

OPM considers the Act to call for each agency head to use this discretion to set and adjust rates based upon performance; therefore, the regulations propose the same basic rules for making and documenting pay determinations whether or not the applicable performance appraisal system is certified. OPM proposes to provide an exemption at 5 CFR 534.511 from certain provisions of the proposed regulation for any agency that makes pay adjustments for SL or ST employees or positions that are not subject to performance appraisal. The exemption applies only with respect to those employees or positions and only to the extent specific proposed regulatory provisions would require the pay-setting policy or individual pay adjustments to be based upon performance appraisal determinations. Otherwise, the regulation would apply. For example, the agency would be required to establish written procedures to govern setting and increasing pay for such employees based upon such criteria as the agency does apply, consistent with applicable statute.

Under the proposed regulations, OPM would require each agency to adjust pay, for SL and ST employees once each year based on performance, contributions to the agency's performance, or both at the time 5 U.S.C. 5376(b)(2) requires each agency head to adjust pay for SL and ST positions in the agency. We propose that an agency must document the basis for each pay increase under 5 CFR 534.507(b) by means of a current rating of record, or, in the absence of a rating of record that reflects current performance, a performance rating that covers a period of at least 90 days.

OPM is proposing to provide that a pay increase must be based upon an agency's determination about the value of an individual's characteristic and continuing service to the agency. The purpose of this provision at 5 CFR 534.507(b)(3) is to draw attention to an agency's responsibility to determine the most appropriate reward for an SL or ST employee's specific contributions, rather than making a pay increase the default option. Under 5 U.S.C. chapter 45 and 5 CFR part 451, agencies may grant an SL or ST employee an award based on a rating of record, a special act or service award, and other incentives. We propose that pay increases be reserved for such contributions as the agency considers characteristic of the employee's service on a continuing basis. While stating this as a general rule, we would expect each agency to interpret and apply it in light of patterns of work that apply for each SL or ST position. For example, the relative infrequency of extraordinary advances in a given field of work should not keep an agency from using increases in a rate of basic pay to recognize characteristic and continuous efforts, as reflected in ongoing individual performance and contributions, by which those advances are achieved and for which the agency depends upon a senior professional. Rather, the intent of this provision is to preclude escalation of pay rates by use of pay increases where other relevant statutory authorities provide more appropriate forms of reward.

Written Procedures

OPM proposes in 5 CFR 534.505 to require that each agency develop written procedures for setting or increasing SL and ST pay, including criteria and administrative and management controls that ensure pay actions conform to the statute and the requirements proposed in this subpart. Under proposed 5 CFR 534.505(b), each agency's written procedures would require rates of basic pay for SL and ST positions to be adjusted under 5 CFR 534.507 on the date statutory adjustments are made to the General Schedule. Under proposed 5 CFR 534.505(a)(5), agency controls must include a central review process for ratings assigned under 5 CFR 430.208 and pay increases proposed under 5 CFR 534.507(b). Under 5 CFR 430.403(d), some agencies already provide for an agency Performance

Review Board (PRB) to review proposed ratings and pay increases for their SL and ST employees. This practice, if documented in the agency's written SL and ST pay procedures, would meet the requirement.

In 5 CFR 534.505(a)(3), we propose that an agency identify in its written plan any criteria used to establish pay ranges applicable to different SL or ST positions (*e.g.,* tiers) consistent with determining pay based upon individual performance or contributions to agency performance. An agency could, for example, use information from its performance management system processes to develop criteria that distinguish pay ranges for SL or ST positions based upon the kinds or levels of contributions to agency performance for which those positions are accountable and place individual SL or ST positions in their respective pay ranges accordingly.

OPM also proposes that an agency head may delegate authority for SL and ST pay actions, except that only the agency head or the designee who performs the functions identified in 5 CFR 430.404(a)(6) may approve the following pay actions: (1) A pay increase resulting in a rate of basic pay within the top 10 percent of the applicable pay range; (2) a pay increase resulting in a rate of basic pay 10 percent or more above the SL or ST employee's salary at the beginning of the fiscal year, or, if more recent, upon initial appointment within the agency; (3) a pay increase upon reappointment of a SL or ST employee who is reappointed within 30 days to the same position or a successor position in the agency; or (4) an off-cycle pay increase as provided in 5 CFR 534.510. We believe top level responsibility for these pay increases is critical to achieve and maintain a reasonable distribution of rates of basic pay within the pay range. OPM is therefore proposing that authority to approve these pay actions may not be further delegated.

OPM is proposing that the head of an agency may delegate to an Inspector General (IG) authority for all pay actions for senior professionals within the Office of Inspector General (OIG). Under the Inspector General Reform Act of 2008, Public Law 110–409, October 14, 2008, an OIG is identified as a separate agency and the IG as the head of that agency for purposes of SES statutes, including pay setting under 5 U.S.C. 5382 and 5383; however, the same was not done for senior professionals. As a result, OPM has no statutory basis to treat an IG as the head of an agency for purposes of pay setting under 5 U.S.C. 5376, or to require an agency head to delegate authority for senior professional pay actions to an IG. OPM nevertheless considers such delegation as supporting the independence of the OIG by avoiding any appearance that pay actions for senior professionals could be used to influence OIG activities. OPM therefore is proposing to clarify in 5 CFR 534.505(e) that an agency head may delegate authority to an IG for all pay actions for senior professionals in the OIG, including those for which OPM proposes under 5 CFR 534.505(c) to restrict delegation to the designee who performs the functions identified in 5 CFR 430.404(a)(6). Such delegation is supported by the fact that 5 CFR 430.404(b) provides that the IG must perform those functions for all senior employees in an OIG. OPM further proposes that if an agency head delegates this authority to the IG, the agency need not count OIG senior professionals when determining whether the agency must perform the centralized review proposed under 5 CFR 534.505(a)(5).

Pay Increases After Certification of a Performance Appraisal System

The Act makes changes to the process for certifying performance appraisal systems that have significant implications for both current SES pay regulations and the proposed SL/ST pay regulations. Formerly, certification of a performance appraisal system was for a calendar year. In effect, the statute supported viewing a certification obtained after the beginning of a calendar year as implicitly covering operations under the performance appraisal system during the entire calendar year, including time elapsed prior to certification. Some agencies have relied upon this to grant pay increases above the EX–III level after certification of a performance appraisal system based upon ratings that became final before the system was certified. Under the Act, however, certification is for a period not to exceed 24 months beginning on the date of certification, unless extended by the Director of the Office of Personnel Management for up to 6 additional months. OPM considers this change to mean that certification is prospective and does not cover performance appraisal system operations prior to certification.

OPM is therefore proposing in 5 CFR 534.507(d)(1) that a rating of record or performance rating used to support a pay increase for an SL or ST employee above EX–III must cover at least 90 days of performance beginning after the date of certification. However, we are also proposing under 5 CFR 534.507(e) to provide that OPM may waive this restriction upon the initial certification of a performance appraisal system and permit an agency to use an appraisal covering time prior to certification, if OPM determines that the agency has been operating under the same performance appraisal system in a manner supporting certification for at least 90 days before certification was granted. Notification of this waiver must be in writing. This waiver would not be available upon reinstatement of a certification that has been suspended under 5 CFR 430.405(h) or upon the subsequent certification of a performance appraisal period for which a previous certification has expired.

Removal of the SES "Certification Gap" Provision

OPM issued a final rule at 71 FR 38753, July 10, 2006, to provide agencies with the authority to increase the rates of basic pay of certain members of the SES whose pay was set before the agency's SES performance appraisal system was certified for the calendar year. The regulation at 5 CFR 534.404(e)(2) permits an agency for which a "certification gap" occurs between expiration of a performance appraisal system certification at the end of a calendar year and certification of that system for the next calendar year to revisit certain pay actions that occur during the certification gap period and provide an additional increase for an affected executive, if warranted, after the system is certified. These pay adjustments may not be made effective before the new certification date. The final rule also provided at 5 CFR 534.404(c)(3)(v) that this kind of increase is not considered a pay adjustment for purposes of the 12-month rule applicable to SES pay adjustments.

We conclude that the change from calendar year certification to prospective certification removes any basis for OPM to authorize an agency to revisit and adjust pay to rates above EX–III but less than or equal to EX–II for a pay action that precedes certification. When certification was on a calendar year basis, time prior to certification but within the calendar year could eventually be viewed as being covered by a certification occurring later in the calendar year. That is no longer the case. Accordingly, we propose to remove and reserve 5 CFR 534.404(e)(2) and 5 CFR 534.404(c)(3)(v) of the SES pay regulations in 5 CFR part 534, subpart D. We propose this approach, as opposed to deletion and revision or re-designation of affected paragraphs, for the administrative convenience of users,

so that paragraph references that previously designated or referred to certain types of pay actions may continue to be used after publication of final regulations to designate or refer to those same types of pay actions in agency documentation.

Preservation of an Established Rate of Basic Pay

We specifically define limits on pay setting upon transfer in proposed 5 CFR 534.509(a). These limits implement the statutory restriction against an individual losing pay when moving from an agency with an applicable certified appraisal system to one without an applicable certified appraisal system. We also specify that an agency may retain an employee's rate of pay above EX–III that has been properly established during service under a certified system in the event that certification expires or is suspended or upon the SL or ST employee's movement to an SL or ST position that is not under a certified system. We consider this an appropriate extension of the principle that Congress does not intend for an employee with a pay rate above EX–III in a certified system to lose pay upon transfer due to the new agency's failure to obtain certification for its system. However, the employee is not eligible for a pay increase until assigned to a position under a certified system or until the employee's rate of basic pay is less than the rate for EX–III.

Off-cycle Pay Increases

OPM is proposing that an agency head or the designee who performs the functions described in 5 CFR 430.404(a)(6) may grant an off-cycle pay increase under proposed 5 CFR 534.510, if warranted. Consistent with the SES pay rules, these regulations would provide that in determining whether an off-cycle pay increase is warranted, the granting official can take into account factors such as the following: (1) An SL or ST employee's exceptionally meritorious accomplishments; (2) the need to offer a pay increase for the employee's assumption of a position that has a greater impact on agency performance; or (3) the need to retain an individual who is critical to the agency's performance, and who otherwise would be likely to leave the agency. We are proposing that an agency must include documentation from other performance management system activities, as needed, and its written procedures to show how such factors were considered in determining the off-cycle pay increase.

Reductions in Pay

An SL or ST employee's rate of basic pay may be reduced subject to adverse action rules in 5 CFR part 752, subpart D; however, an SL or ST employee may be reduced in grade or removed from the Federal service under either 5 CFR part 752, subpart D, or 5 CFR part 432. In 5 CFR 534.508, we are proposing to clarify how pay is to be adjusted when SL or ST employees are reduced in grade under these applicable procedures or move from a position covered by the SL/ST pay system to a lower-level GS position for other reasons. (Pay setting upon movement to a lower-level position in a different pay system (*i.e.,* not under the General Schedule) is governed by the pay-setting rules of that pay system and is not addressed in these proposed regulations.)

SL and ST employees occupy white-collar positions established by reference to GS classification standards (5 CFR 319.203). SL and ST positions were formerly classified in GS–16, 17, and 18 of the GS system. Removal of grade distinctions among SL/ST positions should not obscure the fact that they are white-collar positions placed at a single level above GS–15 by reference to GS classification standards and principles. Though covered by a unique pay system, SL employees remain members of the competitive or excepted service, and ST employees remain members of the competitive service. Their conditions of employment are largely determined by this membership. Removal from coverage under the SL/ST pay system does not require removal from the Federal service. Reduction in grade may enable an agency to retain an accomplished employee in a position better suited to his or her abilities. This is an alternative for the agency and not an entitlement for an SL or ST employee.

We are also proposing in 5 CFR 534.508(d) to allow for an agency and employee to voluntarily agree to a placement that will involve a current or future pay reduction for the employee. We would provide that if an SL or ST employee willingly accepts this pay consequence to facilitate a desired assignment and the agency documents the voluntary nature of the reduction, it will not be subject to 5 CFR part 752, subpart D.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, because they will apply only to Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 534

Government employees, Hospitals, Students, and Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

For the reasons stated in the preamble, the U.S. Office of Personnel Management proposes to amend 5 CFR part 534 as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. Revise the authority citation for part 534 to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5382, 5383, 5384, 5385, 5541, 5550a, sec. 1125 of the National Defense Authorization Act for FY 2004, Pub. L. 108–136, 117 Stat. 1638 (5 U.S.C. 5304, 5382, 5383, 7302; 18 U.S.C. 207); and sec. 2 of Pub. L. 110–372, 122 Stat. 4043 (5 U.S.C. 5304, 5307, 5376).

§ 534.404 [Amended]

2. Amend § 534.404 to remove and reserve paragraphs (c)(3)(v) and (e)(2).

3. Revise subpart E to read as follows:

Subpart E—Pay for Senior-Level and Scientific or Professional Positions

Sec.
534.501 Purpose.
534.502 Coverage.
534.503 Definitions.
534.504 Pay range.
534.505 Written procedures.
534.506 Setting a rate of basic pay upon appointment.
534.507 Annual increases in basic pay.
534.508 Reductions in a rate of basic pay.
534.509 Preservation of an established rate of basic pay.
534.510 Off-cycle pay increases.
534.511 Exemption from performance appraisal requirements.

Subpart E—Pay for Senior-Level and Scientific or Professional Positions

§ 534.501 Purpose.

This subpart provides rules for setting and adjusting rates of basic pay for senior-level (SL) and scientific or professional (ST) employees under 5 U.S.C. 5376. Section 5376, as amended by section 2 of the Senior Professional Performance Act of 2008 (Pub. L. 110–372, October 8, 2008), promotes performance-based pay by enabling an agency that attains certification of a performance appraisal system covering senior professionals to fix rates of basic pay for those employees up to the rate

payable for level II of the Executive Schedule. Under 5 U.S.C. 5307(d) and subpart D of part 430 of this chapter, the Office of Personnel Management (OPM), with Office of Management and Budget (OMB) concurrence, grants certification only to a performance appraisal system that, in its design and application, makes meaningful distinctions based upon relative performance. This subpart implements the purpose of the law by providing for pay determinations for SL and ST employees to be based on individual performance, contributions to the agency's performance, or both, as determined through administration of the agency's performance management system(s) for SL and ST employees.

§ 534.502 Coverage.

(a) This subpart implements 5 U.S.C. 5376 and applies to—

(1) Senior-level (SL) positions classified above GS–15 pursuant to 5 U.S.C. 5108; and

(2) Scientific or professional (ST) positions established under 5 U.S.C. 3104.

(b) This subpart does not apply to—

(1) Senior Executive Service positions established under 5 U.S.C. 3132, unless the incumbent of the position declined to convert to the SES and, under § 317.303 of this chapter, remained at grade GS–16, 17, or 18 (now the SL pay system) or under the ST pay system;

(2) Positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, Defense Intelligence Executive Service, or Senior Cryptologic Executive Service; or

(3) Positions for which pay is fixed by administrative action and is limited to level IV of the Executive Schedule under 5 U.S.C. 5373.

§ 534.503 Definitions.

In this subpart—

Agency means—

(1) An Executive agency as defined in 5 U.S.C. 105;

(2) The Library of Congress; and

(3) Any other entity that is not part of an Executive agency, for which OPM has approved establishment of one or more scientific or professional positions under 5 U.S.C. 3104.

Authorized agency official means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

Certified means having the certification that OPM, with OMB concurrence, grants under 5 U.S.C. 5307(d) and part 430, subpart D of this chapter only to a performance appraisal system that makes, in its design and application, meaningful distinctions based on relative performance. In this subpart, the term ''certified'' refers to a performance appraisal system that has this certification, including a performance appraisal system for which certification has been reinstated after suspension under § 430.405(h) of this chapter.

Movement means a change of an SL or ST employee from one SL or ST position to a different SL or ST position without a break in service under procedures that meet applicable requirements for staffing positions in the competitive service and excepted service. As used in this subpart, the term ''movement'' applies only to an appointment, not a detail, and is used without reference to the pay consequences of an action. Unless otherwise specified, the term refers to position changes both within and between agencies.

Not certified means lacking the certification that OPM, with OMB concurrence, grants under 5 U.S.C. 5307(d) and part 430, subpart D of this chapter only to a performance appraisal system that makes, in its design and application, meaningful distinctions based on relative performance. In this subpart, the term ''not certified'' refers to a performance appraisal system that does not have this certification, or for which a previously granted certification has expired or is suspended under § 430.405(h) of this chapter.

Off-cycle pay increase means any increase in a senior professional's rate of basic pay that becomes effective on a date other than the date specified in § 534.507(a)(1).

OMB means the Office of Management and Budget.

OPM means the Office of Personnel Management.

Performance management system means the framework of policies and practices that an agency uses to implement performance management, as described in § 430.102 of this chapter. As used in this subpart, the term includes, but is not limited to, those disciplines and activities by which an agency addresses the criteria identified in § 430.404(a)(1) through (9) of this chapter as necessary for certification of an agency's performance appraisal system.

Performance rating means the written, or otherwise recorded, appraisal of performance compared to the SL or ST employee's performance standard(s) for each critical and non-critical element on which there has been an opportunity to perform for a minimum of 90 days. A performance rating may include the assignment of a summary level within a pattern as specified in § 430.208(d) of this chapter.

Rate of basic pay means the rate of pay fixed by law or administrative action for an SL or ST employee under the provisions of 5 U.S.C. 5376 and this subpart before any deductions and exclusive of additional pay of any other kind.

Rating of record means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern as specified in § 430.208(d) of this chapter that has been reviewed and approved in accordance with § 534.505(a).

Scientific or professional (ST) employee means an individual appointed to a position described in § 319.103 and authorized by OPM under § 319.202 of this chapter or otherwise established under 5 U.S.C. 3104.

Senior-level (SL) employee means an individual appointed to a position described in § 319.102 and authorized by OPM under § 319.202 of this chapter.

Senior professional means an SL or ST employee.

Transfer means any movement, as defined in this section, that is a change of a senior professional from an SL or ST position in one agency to an SL or ST position in another agency without a break in service of at least 1 full workday.

§ 534.504 Pay range.

(a) A rate of basic pay under this subpart must be—

(1) Not less than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule, and

(2) Not greater than—

(i) The rate of basic pay payable for level III of the Executive Schedule (EX–III), or

(ii) In the case of an SL or ST employee who is covered by a certified performance appraisal system or whose established rate of basic pay is preserved under § 534.509, the rate of basic pay payable for level II of the Executive Schedule (EX–II).

(b) An agency may not set or adjust the rate of basic pay for an SL or ST employee higher than the maximum in—

(1) Paragraph (a)(2)(i) of this section (*i.e.,* EX–III) when the SL or ST employee is covered by a performance appraisal system that is not certified or when the SL or ST employee is not subject to a performance appraisal system, except as provided in § 534.509; or

(2) Paragraph (a)(2)(ii) of this section (*i.e.,* EX–II) when the SL or ST employee

is covered by a certified performance appraisal system.

§ 534.505 Written procedures.

(a) Each agency with positions subject to this subpart must establish written procedures for setting the rate of basic pay and increasing the rate of basic pay of incumbents of the positions in accordance with law and this subpart. Agencies must provide for transparency in the processes for making pay decisions, while assuring confidentiality. The agency's plan for setting and increasing rates of basic pay must reflect meaningful distinctions among SL and ST employees based on individual performance, contribution to agency performance, or both, and must include—

(1) The criteria that will be used to set and increase a senior professional's rate of basic pay to ensure that individual pay rates or pay increases, as well as their overall distribution within the senior professional pay range, reflect meaningful distinctions within a single performance level (*e.g.,* the higher the employee's relative performance within a rating level, the higher the pay increase), between performance rating levels (*e.g.,* the higher the rating level, the higher the pay increase), or both;

(2) The criteria that will be used to set and increase a senior professional's rate of basic pay at a rate that exceeds the rate for level III of the Executive Schedule if the applicable agency performance appraisal system has been certified under part 430, subpart D of this chapter;

(3) Any system, methods, or criteria the agency uses to establish pay ranges applicable to various SL or ST positions within the pay range that applies under § 534.504(a), consistent with the requirement that pay be determined based upon individual performance, contributions to the agency's performance, or both;

(4) The designation of the authorized agency official(s) who will have the authority to set and adjust rates of basic pay for SL and ST employees, subject to the requirements of paragraph (c) of this section; and

(5) The administrative and management controls that will be applied to assure compliance with applicable statutes, OPM regulations, the agency's written procedures established under this section, the applicable maximum rate of basic pay in § 534.504(a), and, where applicable, the certification requirements set forth in part 430, subpart D of this chapter. In an agency that employs ten or more senior professionals, these controls must include centralized review of ratings assigned under § 430.208 of this chapter and pay actions proposed under § 534.507 by a panel of individuals designated by the agency head to advise on whether—

(i) Ratings of record and performance ratings used to increase basic pay are consistent with performance differentiation as described in § 430.404(a)(8) of this chapter; and

(ii) Proposed rates of basic pay are consistent with pay differentiation as described in § 430.404(a)(9) of this chapter.

(b) Each agency's written procedure must provide that effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under 5 U.S.C. 5303 in the rates of basic pay under the General Schedule, the head of an agency will adjust a senior professional's rate of basic pay under the provisions of § 534.507.

(c) The following actions must be approved by the agency head or by the designee who performs the functions described in § 430.404(a)(6) of this chapter and this approval authority may not be further delegated:

(1) Any pay-setting action under § 534.506 or any pay increase under § 534.507 that results in a rate of basic pay that is within the highest 10 percent of the applicable rate range under § 534.504. A rate of basic pay equal to or above the amount derived using the following rules is considered to be within the highest 10 percent of the applicable pay range (in 2010, $173,685 or above if the applicable system is certified, or $160,725 or above if the applicable system is not certified or performance appraisal does not apply):

(i) Subtract the minimum rate of basic pay from the maximum rate of basic pay for the applicable rate range under § 534.504 (in 2010, $179,700 − $119,554 = $60,146 if the applicable system is certified, or $165,300 − $119,554 = $45,746 if the applicable system is not certified or performance appraisal does not apply);

(ii) Multiply the amount derived in paragraph (b)(1)(i) of this section by .10 (in 2010, $60,146 × .10 = $6,015 if the applicable system is certified, or $45,746 × .10 = $4,575 if the applicable system is not certified or performance appraisal does not apply); and

(iii) Subtract the amount derived in paragraph (b)(1)(ii) of this section from the maximum rate of basic pay applicable under § 534.504 (in 2010, $179,700 − $6,015 = $173,685 if the applicable system is certified, or $165,300 − $4,575 = $160,725 if the applicable system is not certified or performance appraisal does not apply);

(2) Any pay increase under § 534.507 that results in a rate of basic pay more than 10 percent above the SL or ST employee's rate of basic pay as in effect on the last day of the preceding fiscal year or, if the individual was first appointed as an SL or ST employee in the agency after the last day of the preceding fiscal year, more than 10 percent above the rate of basic pay set at the time of that appointment. A rate of basic pay more than 10 percent above the applicable rate of basic pay is considered to be any rate of basic pay that exceeds the amount derived by multiplying the applicable rate of basic pay by a factor of 1.1;

(3) Any pay-setting action under § 534.506(c)(2) that results in a higher rate of basic pay than the senior professional had upon leaving the agency; and

(4) Any off-cycle pay increase under § 534.510.

(d) An agency must keep its written procedures up to date, make them available to OPM upon request and to affected SL and ST employees, and periodically provide training or supplemental guidance to assist SL and ST employees in understanding their application.

(e)(1) The head of an agency may delegate to an Inspector General the authority to set and adjust pay for senior professionals in the Office of the Inspector General, including authority for pay actions described in paragraph (c) of this section.

(2) An agency head who delegates to an Inspector General the authority to set and adjust pay for all senior professionals in the Office of the Inspector General, including all pay actions described in paragraph (c) of this section, may exclude those senior professionals from the count of agency senior professionals for the purpose of determining whether centralized review under paragraph (a)(5) of this section is required.

(3) An Inspector General to whom an agency head delegates authority to set and adjust pay for 10 or more senior professionals in the Office of the Inspector General must provide the centralized review required by paragraph (a)(5) of this section and may use Federal employees from outside the agency for that purpose, including individuals from the Inspector General community.

§ 534.506 Setting a rate of basic pay upon appointment.

(a) An authorized agency official may set the rate of basic pay of an individual

who is not currently an SL or ST appointee of the agency at any rate within the applicable rate range under § 534.504(a) upon appointment to an SL or ST position in the agency, subject to the requirements of this section. In setting a new senior professional's rate of basic pay, an agency must consider the nature and quality of the individual's experience, accomplishments, and any unique skills, qualifications, or competencies the individual possesses as they relate to requirements of the senior professional position and its impact on the agency's performance. Rates of basic pay above the rate for level III of the Executive Schedule but less than or equal to the rate for level II of the Executive Schedule generally are reserved for those newly appointed senior professionals who possess superior leadership, scientific, professional or other competencies necessary to address key program and mission requirements, as determined by the agency as part of its strategic human capital plan.

(b) Consistent with the agency's written procedures and paragraph (a) of this section, an authorized agency official may set the rate of basic pay for an SL or ST employee upon transfer from another agency at any rate of basic pay within the pay range that applies to the SL or ST position under § 534.504(a), except as provided in § 534.509(a).

(c)(1) Consistent with the agency's written procedures and paragraph (a) of this section, except as provided in paragraph (c)(2) of this section, an authorized agency official may set pay upon reappointment of a former SL or ST employee at any rate of basic pay within the pay range that applies to the SL or ST position under § 534.504(a).

(2) If a former agency SL or ST employee is reappointed within 30 days to the same position or a successor position in the same agency, the agency may not give the individual a higher rate of basic pay upon reappointment unless the agency head or the designee who performs the functions described in § 430.404(a)(6) of this chapter determines that a higher rate of basic pay is warranted.

§ 534.507 Annual increases in basic pay.

(a)(1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under 5 U.S.C. 5303 in the rates of basic pay under the General Schedule, the head of an agency must adjust a senior professional's rate of basic pay under paragraph (b) of this section by an amount he or she considers appropriate, subject to the applicable maximum rate under § 534.504(a), the agency's written procedures under § 534.505, and the provisions of this section. For this purpose, a determination by an authorized agency official to make a zero adjustment in pay after reviewing a senior professional's current rating of record or performance rating is considered to be a pay adjustment.

(2) A pay adjustment under paragraph (a)(1) of this section does not restrict the authority of an agency head to increase pay at other times as authorized under § 534.510, if warranted.

(b)(1) An agency may provide a pay increase to a senior professional only upon a determination by the authorized agency official that the senior professional's performance and/or contributions to agency performance so warrant.

(2) Increases resulting in a rate of basic pay above level III of the Executive Schedule but less than or equal to the rate for level II of the Executive Schedule are reserved for those senior professionals who demonstrate the highest levels of individual performance, make the greatest contributions to the agency's performance, or both, as determined by the agency through the administration of its performance management system.

(3) A pay increase must reflect the agency's judgment concerning the value of the employee's characteristic and continuing service to the agency in the SL or ST position. A single noteworthy contribution that is not characteristic of the employee's continuing performance requirements, individual performance or contributions to the agency's performance should be recognized by an appropriate award under part 451, subpart A of this chapter, or other appropriate authority, rather than by a permanent increase in the rate of basic pay.

(c) An agency must document the basis for each pay increase granted under paragraph (b) by means of—

(1) A current rating of record; or

(2) A performance rating that covers a period of at least 90 days and is assigned in accordance with subpart B of part 430 of this chapter and the centralized review required by § 534.505(a)(5), but only if a rating of record is not available or does not reflect current performance.

(d) Any increase under this section that results in a rate of basic pay above the rate for level III of the Executive Schedule may not be made effective unless—

(1) The rating of record or performance rating used to justify the increase covers a period of at least 90 days of performance during which the applicable performance appraisal system has continuously been certified under 5 U.S.C. 5307(d) and part 430, subpart D of this chapter;

(2) The rating of record or performance rating used to justify the increase becomes final while the applicable performance appraisal system is certified;

(3) The rating and pay increase are reviewed and approved in accordance with § 534.505(a);

(4) The pay increase is approved in accordance with § 534.505(c), as applicable, and the agency's written procedures; and

(5) The pay increase becomes effective while the applicable performance appraisal system is certified.

(e) Upon the initial certification under 5 U.S.C. 5307(d) and part 430, subpart D of this chapter by OPM, with OMB concurrence, of an agency performance appraisal system covering SL or ST employees, OPM may waive the requirement of paragraph (d)(1) of this section. The requirement may be waived only if OPM determines that the agency has, for a period of no less than 90 days prior to certification, consistently applied the same performance appraisal system to covered SL or ST employees in a manner consistent with certification. If OPM waives this requirement, OPM will notify the agency in writing.

(f) Except as required by paragraph (g) of this section, a pay increase under this section may not be provided to an employee—

(1) Who has a current rating of record below Level 3 (Fully Successful or equivalent), as described in § 430.208 of this chapter; or

(2) Who, after receiving a rating of record at Level 3 or above, receives a more recent performance rating that rates performance in a critical element at a level below fully successful, as described in § 430.206(b)(8)(i) of this chapter.

(g) An SL or ST employee whose rate of basic pay would otherwise fall below the minimum rate of the SL and ST pay range under § 534.504(a)(1) must be provided a pay adjustment sufficient to maintain the minimum rate of basic pay.

(h)(1) If the rates of basic pay under the General Schedule are increased under 5 U.S.C. 5303 on the date specified in paragraph (a)(1) of this section and the agency head decides upon a zero adjustment for an SL or ST employee who has a current rating of record or applicable performance rating at level 3 or above, as described in § 430.208 of this chapter, the agency

must communicate the reasons for that decision to the employee in writing.

(2) Paragraph (h)(1) of this section shall not apply to a senior professional with a rate of basic pay described in § 534.505(c)(1) unless—

(i) the rates of basic pay for the Executive Schedule are also increased on the date specified in paragraph (a)(1) of this section, and

(ii) the senior professional has a current rating of record or applicable performance rating at level 4 in an appraisal program that uses summary level pattern G, or at level 5 in an appraisal program that uses summary level pattern H, as described in § 430.208 of this chapter.

(3) Paragraphs (h)(1) and (h)(2) of this section may not be construed to require a pay increase for any senior professional employee.

§ 534.508 Reductions in a rate of basic pay.

(a) Any reduction in a rate of basic pay for an SL or ST employee is subject to part 752, subpart D of this chapter except as otherwise provided in this section.

(b) If an employee is removed from an SL or ST position and placed in a General Schedule position under procedures in part 752, subpart D of this chapter or part 432 of this chapter providing for reduction in grade, or otherwise moves voluntarily or involuntarily to a General Schedule position, the employee is entitled to the minimum rate of basic pay, as defined in § 531.203 of this chapter, for the General Schedule grade unless the agency sets the employee's pay at a higher rate under—

(1) The maximum payable rate rule in § 531.221 of this chapter, if applicable;

(2) The superior qualifications and special needs pay-setting authority in § 531.212 of this chapter, if applicable; or

(3) The pay retention rules in part 536, subpart C of this chapter, if applicable.

(c) An agency may reduce an SL or ST employee's rate of basic pay, subject to part 752, subpart D of this chapter, upon movement to a different SL or ST position within the agency. If an SL or ST employee elects to accept a reduction in pay to facilitate a reassignment and the agency documents the voluntary nature of the action, the resulting pay reduction is not subject to part 752, subpart D of this chapter.

(d) If an SL or ST employee elects to accept a temporary increase in a rate of basic pay upon movement to another SL or ST position with the understanding that the employee will be returned to his or her former rate of basic pay when the agency terminates the assignment and the agency documents the voluntary nature of the action, the resulting reduction to the former rate of basic pay (or to a higher rate of basic pay determined under this subpart that is within the pay range applicable to the SL or ST position under § 534.504(a)) is not subject to part 752, subpart D of this chapter.

(e) A reduction in the rate of basic pay of an SL or ST employee under § 534.506(b) upon transfer is considered voluntary upon the employee's acceptance of the appointment and is not subject to part 752, subpart D of this chapter, except that an SL or ST employee's rate of basic pay may not be reduced upon transfer under circumstances described in § 534.509(a). A reduction in the rate of basic pay of an SL or ST employee upon a transfer of function under part 351, subpart C of this chapter from another agency is subject to part 752, subpart D of this chapter, unless otherwise provided by statute.

§ 534.509 Preservation of an established rate of basic pay.

(a) An SL or ST employee whose rate of basic pay is higher than the rate for level III of the Executive Schedule may not suffer a reduction in pay as a result of transfer to an SL or ST position in another agency where the maximum rate of basic pay for the applicable SL or ST rate range is equal to the rate for level III of the Executive Schedule.

(b) An SL or ST employee whose rate of basic pay is higher than the rate for level III of the Executive Schedule may not suffer a reduction in pay because his or her agency's applicable performance appraisal system certification expires or is suspended under § 430.405(h) of this chapter. See § 530.203(g) and (h) of this chapter for treatment of the aggregate pay limit when certification status changes during the calendar year.

(c) An agency may continue an SL or ST employee's rate of basic pay above the rate for level III of the Executive Schedule upon that employee's movement within the agency to an SL or ST position that is not under a certified performance appraisal system. Pay may be reduced upon the movement only as provided in § 534.508.

(d) If an agency grants a temporary pay increase under conditions described in § 534.508(d) to an SL or ST employee subject to a certified performance appraisal system who, prior to the temporary pay increase, has a rate of basic pay above the rate for level III of the Executive Schedule, the agency may return the employee to an SL or ST position that is not subject to a certified performance appraisal system when the temporary assignment ends and set the SL or ST employee's rate of basic pay at the rate in effect immediately before the temporary pay increase.

(e) When a rate of basic pay that is higher than level III of the Executive Schedule is preserved under a provision of this section, the SL or ST employee will continue to receive his or her current rate of basic pay and is not eligible for a pay increase until he or she is assigned to an SL or ST position covered by a certified performance appraisal system or his or her rate of basic pay is less than the rate for level III of the Executive Schedule.

(f) An agency that is otherwise subject to the limitation in § 534.504(a)(2)(i) with respect to an SL or ST position occupied by an SL or ST employee whose rate of basic pay is authorized to be preserved under paragraph (a), (b), (c), or (d) of this section may set that employee's rate of basic pay above EX–III only at the level required to preserve the applicable rate.

(g) Preservation of a rate of basic pay under this section does not preclude a subsequent reduction in pay as provided in § 534.508.

§ 534.510 Off-cycle pay increases.

(a) An authorized agency official may provide an off-cycle pay increase to a senior professional if, and only if, the agency head or the designee who performs the functions identified in § 430.404(a)(6) of this chapter determines an off cycle pay increase is warranted and approves the amount of the increase subject to the requirements of this section and the agency's written procedures established under § 534.505. The authority to approve an off-cycle pay increase under this section may not be further delegated.

(b) Except as provided in paragraph (d) of this section, an off-cycle pay increase must be supported by factors that distinguish the level of the senior professional's performance and/or contributions to agency performance from that of his or her peers, as applicable, and from that sufficiently rewarded through the annual pay adjustment. In assessing the warrant for an off-cycle pay increase, the approving official may consider such factors as—

(1) A senior professional's exceptionally meritorious accomplishments that contribute significantly to the agency's performance;

(2) The need to offer a pay increase to reassign a senior professional to a

position that has a substantially greater impact on agency performance; and

(3) The need to retain a senior professional whose contributions are critical to the agency and who is likely to leave the agency in the absence of a pay increase.

(c) Each off-cycle pay increase that is based upon such factors as are described in paragraphs (b)(1) through (3) of this section must be documented in accordance with § 534.507(b) through (e), except that the agency must also provide information to explain how each applicable factor was considered in determining the pay increase. This information may be derived from the agency's written pay procedures established under § 534.505, agency performance management system activities, or other sources the agency deems useful for this purpose.

(d) If the maximum rate of basic pay applicable to an agency's senior professionals increases during the one year period following the annual pay adjustment under § 534.507(a)(1) for reasons other than a change in the certification status of an applicable performance appraisal system, the agency head or the designee who performs the functions identified in § 430.404(a)(6) of this chapter may consider whether, and to what extent, an additional pay increase may be warranted for a senior professional based on the same criteria used in determining his or her annual pay increase. However, if the increase in maximum rate of basic pay is due to a change in the certification status of an applicable performance appraisal system, the requirements of paragraphs (a), (b), and (c) of this section apply.

(e) An off-cycle pay increase granted under this section will be effective prospectively, not retroactively.

§ 534.511 Exemption from performance appraisal requirements.

(a) An agency responsible for setting and adjusting rates of basic pay for SL or ST employees or positions excluded from performance appraisal by or under statute is, with respect to those employees or positions, exempt from any provision of this subpart to the extent that it makes a pay determination contingent upon performance appraisal, including—

(1) Section 534.505(a)(1), (2) and (3) to the extent these paragraphs require that an agency's plan for setting and increasing rates of basic pay reflect meaningful distinctions among SL and ST employees based upon individual performance and include criteria that ensure individuals with the highest levels of individual performance, or the greatest contributions to agency performance, or both receive the highest pay increases. The agency must still provide written procedures for setting and adjusting rates of pay for covered SL and ST employees that specify criteria that will be applied consistent with applicable law. The remaining provisions of § 534.505 apply, except for references in § 534.505(a)(5) to compliance with certification requirements, centralized review of ratings and pay actions, performance differentiation as described in § 430.404(a)(8) of this chapter, and pay differentiation as described in § 430.404(a)(9) of this chapter;

(2) Section 534.507(b), (c), (d), (e), and (f). The agency must still document in writing the basis for each pay increase under § 534.507 in accordance with criteria specified in the agency's written procedures under § 534.505(a); and

(3) Section 534.510(b) and (c). The agency must still document in writing the basis for each off-cycle pay increase under § 534.510 in accordance with criteria specified in the agency's written procedures under § 534.505(a).

(b) Except as specified in paragraph (a) of this section, an agency responsible for setting and adjusting rates of basic pay for SL or ST employees excluded from performance appraisal by or under statute is subject to the requirements of this subpart with respect to those employees.

(c) The maximum rate of basic pay for an SL or ST employee or position not subject to performance appraisal is the maximum rate described in § 534.504(a)(2)(i). An agency head who uses the exemption in paragraph (a) of this section to set the rate of basic pay for SL or ST employees who are not subject to performance appraisal may not certify that those employees are covered by a performance appraisal system meeting the certification criteria established in part 430, subpart D of this chapter for purposes of authorizing rates of basic pay above the rate for level III of the Executive Schedule.

(d) Notwithstanding paragraph (c) of this section, an agency responsible for setting and adjusting rates of basic pay for SL or ST employees or positions excluded from performance appraisal by or under statute is subject to § 534.509(a) when setting a rate of basic pay for an SL or ST employee upon transfer to such a position. The agency may also apply § 534.509(c) upon movement of an SL or ST employee whose rate of basic pay was initially set under § 534.509(a) or § 534.509(c) to another SL or ST position that is excluded from performance appraisal. Pay may be reduced upon the movement only as provided in § 534.508. In either case, the employee will not be eligible for a pay increase until he or she is appointed to an SL or ST position that is subject to a certified performance appraisal system or until his or her rate of basic pay is less than the rate for level III of the Executive Schedule.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27 and 28

[Doc. # AMS–CN–11–0066]

RIN 0581–AD19

Revision of Cotton Classification Procedures for Determining Cotton Leaf Grade

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to revise the procedure for determining the official leaf grade for Upland and Pima cotton. The leaf grade is a part of the official classification which denotes cotton fiber quality used in cotton marketing and manufacturing of cotton products. Currently, the leaf grade is determined by visual examination and comparison to the Official Cotton Standards by qualified cotton classers. This proposed revision would replace the classer's leaf determination with the instrument leaf measurement made by the High Volume Instrument (HVI) system used in official cotton classification for Upland Cotton since 1991.

DATES: Comments must be received on or before January 9, 2012.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

Internet: *http://www.regulations.gov.*

Mail: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. Comments should be submitted in triplicate. All comments should reference the document number, date, and page number of this issue of the **Federal Register**.

All comments will be available for public inspection at Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Memphis, TN 38133 during regular business hours. A copy of this

notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. Telephone (901) 384–3060, facsimile (901) 384–3021, or email *darryl.earnest@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers, merchants, and textile manufacturers in the U.S. who voluntarily use the AMS cotton classing services annually under the United States Cotton Standards Act of 1923, as amended (7 U.S.C. 51–65), the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476), and the U.S. Cotton Futures Act, [7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g)]. The majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). The change in procedures will not significantly affect small businesses as defined in the RFA because:

(1) Classification will continue to be based upon the Official Standards for Upland Cotton Color Grade established and maintained by the Department;

(2) The HVI measurement has been a part of the official classification record since 1991. Implementation of the revision for all cotton classification will not affect competition in the marketplace or adversely impact on cotton classification fees; and

(3) The use of cotton classification services is voluntary. For the 2010 crop, 17.6 million bales were produced by growers, and virtually all of them were voluntarily submitted for USDA classification. Futures classification services provided for merchants during the same period totaled approximately 680 thousand bales.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520) the information collection requirements contained in the regulation to be amended is currently approved under OMB control number 0581–0008, Cotton Classing, Testing and Standards.

Background

AMS Cotton and Tobacco Programs propose to revise the procedures for providing cotton leaf grade classification services as authorized by the United States Cotton Standards Act of 1923, as amended, the Cotton Statistics and Estimates Act of 1927, and the U.S. Cotton Futures Act. While measurements for other quality factors are performed by precise HVIs, manual determinations for leaf grade and extraneous matter are currently part of the official USDA cotton classification. Accurate assignment of leaf grade is of economic importance to all participants along the cotton supply chain since leaf content is all waste and there is a cost factor associated with its removal. Furthermore, since small leaf particles cannot always be removed, these particles detract from the quality and, therefore, the value of the finished product.

AMS has instruments with the ability to optically identify, with a high level of confidence, the number of leaf particles (Particle Count) and to measure the surface area covered by non-lint particles (Area). AMS then applies mathematical algorithms to correlate Particle Count and Area data to Universal Leaf Grade Standards. A pilot project was conducted by AMS during 2009 and 2010 cotton classing seasons to evaluate the accuracy of the proposed instrument leaf grade determination process. Results showed that the HVI determines Official leaf grades more accurately than cotton classers. The Cotton and Tobacco Programs propose to introduce instrument leaf grading into the cotton classification process. This proposed change would improve the repeatability, consistency and accuracy of leaf grade classification data provided to the cotton industry, while potentially improving operational efficiency.

For the reasons set forth above, this proposed rule would amend the sections in Part 28— Cotton Classing, Testing, and Standards, Subpart A—Regulations Under the United States Cotton Standards Act, which establishes the procedures for determining official cotton classification based on the Official Cotton Grade Standards. Since cotton classification services under the United States Cotton Futures Act must conform to the requirements of the Cotton Standards Act, this proposed rule would also amend the sections in Part 27—Cotton Classification Under Cotton Futures Legislation which establish the procedures for determining cotton classification for cotton submitted for futures certification.

In § 27.2 (n), the definition of the term ''classification'' would be revised to reflect the changes in procedures made under Part 28.

Also under part 27, § 27.31 would be revised to reflect the deletion of the requirement for cotton classers to manually determine leaf grade. The revised section would reflect the changes made in procedures for determination of cotton quality in accordance with the official standards.

In part 28, § 28.8 would be revised to reflect the change in cotton classification procedures which replaces classer visual examinations to determine leaf grade with instrument leaf measurement by High Volume Instruments.

In addition, miscellaneous other changes are proposed to be made to parts 27 and 28 to better reflect current procedures in view of leaf determination change. For example, those determinations made by cotton classers or by authorized Cotton Program employees will be specified.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. The comment period has been limited to 15 days from the date of publication to allow the cotton industry to fully benefit from the increased accuracy and repeatability of cotton leaf grade data provided by instrument leaf grading during the current classing season.

List of Subjects

7 CFR Part 27

Commodity futures, Cotton.

7 CFR Part 28

Administrative practice and procedure, Cotton.

For the reasons set forth in the preamble, 7 CFR parts 27 and 28 are proposed to be amended as follows:

PART 27—[AMENDED]

1. The authority citation for 7 CFR Part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. In § 27.2, paragraph (n) is revised to read as follows:

§ 27.2 Terms defined.

* * * * *

(n) *Classification.* The classification of any cotton shall be determined by the quality of a sample in accordance with Official Cotton Standards of the United States for the color grade, the leaf grade, and fiber property measurements of American Upland cotton. High Volume Instruments will determine all fiber property measurements except extraneous matter. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter.

* * * * *

3. Section 27.31 is revised to read as follows:

§ 27.31 Classification of cotton.

For purposes of subsection 15b(f) of The Act, classification of cotton is the determination of the quality of a sample in accordance with the Official Cotton Standards of the United States for the color grade and leaf grade of American upland cotton, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except extraneous matter. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter and authorized employees of the Cotton and Tobacco Programs will determine all fiber property measurements using High Volume Instruments.

PART 28—[AMENDED]

4. The authority citation for 7 CFR Part 28 continues to read as follows:

Authority: 7 U.S.C. 55 and 61.

5. Section 28.8 is revised to read as follows:

§ 28.8 Classification of cotton; determination.

For the purposes of The Act, the classification of any cotton shall be determined by the quality of a sample in accordance with Official Cotton Standards of the United States for the color grade and the leaf grade of American upland cotton, the length of staple, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except extraneous matter, special conditions and remarks. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter, special conditions and remarks and authorized employees of the Cotton and Tobacco Programs will determine all fiber property measurements using High Volume Instruments. The classification record of a Classing Office or the Quality Control Division with respect to any cotton shall be deemed to be the classification record of the Department.

Dated: December 14, 2011.

Robert C. Keeney,

Acting Administrator.

[FR Doc. 2011–32926 Filed 12–22–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–10–0055]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the General Specifications for Dairy Plants Approved for United States Department of Agriculture (USDA) Inspection and Grading Service (General Specifications) by raising the maximum allowable somatic cell count in producer herd goat milk from 1,000,000 cells per milliliter to 1,500,000 cells per milliliter. This will ensure that goat milk can continue to be shipped and recognizes that goats have a need for different regulatory limits for somatic cells than cows.

In addition this document proposes to eliminate mandatory sediment testing on producer milk except for milk in cans. The requirement for sediment testing has become outdated and is no longer needed.

DATES: Submit written or electronic comments on or before February 21, 2012.

ADDRESSES: You may use any of the following methods to file comments on this action:

By mail: Susan Sausville, Chief, Standardization Branch, Dairy Programs, STOP 0230 (Room 2746 South Building), Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–0230

By fax: (202) 720–2643

By internet: http://www.regulations.gov.

By email: Susan.Sausville@ams.usda.gov.

Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments submitted, including name and address, if provided will be included in the record and made available to the public via *http://www.regulations.gov.* The current General Specifications are available either from the above mailing address or by accessing the following internet address: *http://www.ams.usda.gov/dairy/Genspecs.pdf.*

FOR FURTHER INFORMATION CONTACT: Susan Sausville, Chief, Standardization Branch, Dairy Programs, AMS, USDA, telephone (202) 720–9382 or email *Susan.Sausville@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

The proposed rule has been reviewed in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), and AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

AMS provides, under the authority of the Agricultural Marketing Act of 1946, voluntary, user-fee funded inspection and grading services to approximately 400 dairy manufacturing plants. All of the dairy manufacturing plants utilizing the program would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

The proposed amendments would not have a significant economic impact since participation in the USDA-approved plant program is voluntary and the cost to those utilizing the program would not increase.

C. Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

D. Paperwork Reduction Act

The information collection requirements that appear in Part 58 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0110 under the Paperwork Reduction Act (44 U.S.C. chapter 35). This action will not impose any additional reporting or recordkeeping requirements on large or small dairy processors.

Background and Proposed Changes

The proposed change for goat milk raises the maximum allowable somatic cell count from 1,000,000 to 1,500,000 cells per milliliter. Due to inherent differences between cows and goats, goat milk with a somatic cell count of 1,500,000 cells per milliliter can be produced from a healthy, non-mastitic udder and therefore is quality milk. The proposed change for goat milk will ensure its continued shipment and recognizes that goats have a need for different regulatory limits for somatic cells than cows. The need for a separate standard for goat milk was recognized by the National Conference on Interstate Milk Shipments (NCIMS), and a proposal to raise the somatic cell count in goat milk was approved at the 2009 NCIMS Conference. This proposed change will align the General Specifications for Dairy Plants Approved for USDA Inspection and Grading with the Grade A requirements for goat milk.

The proposed change on sediment testing would eliminate the provisions imposing mandatory sediment testing on producer milk except for milk in cans. The requirement for sediment testing has become outdated and is no longer needed. The regulations governing sediment testing were promulgated in 1975 before dairy operations started using contained milking, storage, and transportation facilities for commercial milk production. The proposed change in sediment testing is based on the fact that the majority of milk sold in the United States is produced using automated milking equipment and systems that provide no opportunity for sediment contamination. Because milk production predominantly occurs in clean, modern facilities, using sealed lines, storage tanks and sanitary pumps with no ''manual handling'' sediment testing is no longer needed except for those producers using cans for milk collection where there is a risk of sediment contamination.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58 be amended as follows:

PART 58—[AMENDED]

Subpart B—General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

1. The authority citation for 7 CFR part 58, Subpart B, continues to read as follows:

Authority: Agricultural Marketing Act of 1946, 7 U.S.C. 1621–1627.

2. Amend § 58.133 by revising paragraphs (b)(5) introductory text, (b)(5)(ii), and (b)(6) to read as follows:

§ 58.133 Methods for quality and wholesomeness determination.

* * * * *

(b) * * *

(5) Whenever the official test indicates the presence of more than 750,000 somatic cells per ml. (1,500,000 per ml. for goat milk), the following procedures shall be applied:

* * * * *

(ii) Whenever two out of the last four consecutive somatic cell counts exceed 750,000 per ml. (1,500,000 per ml. for goat milk), the appropriate State regulatory authority shall be notified and a written notice given to the producer. This notice shall be in effect as long as two of the last four consecutive samples exceed 750,000 per ml. (1,500,000 per ml. for goat milk).

(6) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (b)(5)(ii) of this section. If this sample also exceeds 750,000 per ml. (1,500,000 per ml. for goat milk), subsequent milkings shall not be accepted for market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer may be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 750,000 per ml. (1,500,000 per ml. for goat milk). The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

* * * * *

Amend § 58.134 by revising the section heading, paragraphs (b), (c), (d), and (e) to read as follows:

* * * * *

§ 58.134 Sediment content for milk in cans.

(b) *Sediment content classification.* Milk in cans shall be classified for sediment content, regardless of the results of the appearance and odor examination required in § 58.133(a), as follows:

USDA Sediment Standard

No. 1 (acceptable)—not to exceed 0.50 mg. or equivalent.

No. 2 (acceptable)—not to exceed 1.50 mg. or equivalent.

No. 3 (probational, not over 10 days)—not to exceed 2.50 mg. or equivalent.

No. 4 (reject)—over 2.50 mg. or equivalent.

(c) *Frequency of tests.* At least once each month, at irregular intervals, one or more cans of milk selected at random from each producer shall be tested.

(d) *Acceptance or rejection of milk.* If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified No. 4 the milk shall be rejected: *Provided that,* If the shipment of milk is commingled with other milk in a transport tank the next shipment shall not be accepted until its quality has been determined before being picked up; however, if the person making the test is unable to get to the farm before the next shipment it may be accepted but no further shipments shall be accepted unless the milk meets the requirements of No. 3 or better. In the case of milk classified as No. 3 or No. 4, all cans shall be tested. Producers of No. 3 or No. 4 milk shall be notified immediately and shall be furnished applicable sediment discs and the next shipment shall be tested.

(e) *Retests.* On test of the next shipment all cans shall be tested. Milk classified as No. 1, No. 2, or No. 3 may be accepted, but No. 4 milk shall be rejected. The producers of No. 3 or No. 4 milk shall be notified immediately, furnished applicable sediment discs and the next shipment tested. This procedure of retesting successive shipments and accepting probational (No. 3) milk and rejecting No. 4 milk may be continued for not more than 10 calendar days. If at the end of this time all of the producer's milk does not meet

the acceptable sediment content classification (No. 1 or No. 2), it shall be rejected.

Dated: December 14, 2011.

David R. Shipman,

Acting Administrator.

[FR Doc. 2011–32925 Filed 12–22–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742 and 774

[Docket No. 111020643–1642–01]

RIN 0694–AF42

Revisions to the Export Administration Regulations (EAR): Control of Vessels of War and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security publishes a proposed rule that describes how surface vessels of war and related articles that the President determines no longer warrant control under Category VI (surface vessels of war and special naval equipment) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL) in new Export Control Classification Numbers (ECCNs) 8A609, 8B609, 8C609, 8D609, and 8E609.

This rule is one of a planned series of proposed rules that are part of the Administration's Export Control Reform Initiative under which various types of articles presently controlled on the USML under the International Traffic in Arms Regulations (ITAR) would, instead, be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR), if and after the President determines that such articles no longer warrant control on the USML.

BIS is publishing this proposed rule, on December 23, 2011, in conjunction with another proposed rule that describes how submersible vessels, oceanographic and associated equipment the President determines no longer warrant control under USML Category VI or Category XX would be controlled under the CCL in new Export Control Classification Numbers (ECCNs) 8A620, 8B620, 8D620, and 8E620. This proposed rule also is being published in conjunction with two proposed rules of the Department of State, Directorate of Defense Trade Controls, that would amend the list of articles controlled by USML Categories VI and XX, respectively.

DATES: Comments must be received by February 6, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* The identification number for this rulemaking is BIS–2011–0044.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AF42 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF42.

FOR FURTHER INFORMATION CONTACT: Alexander Lopes, Director, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–4875, Email: *Alexander.Lopes@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) (''the July 15 proposed rule'') that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), would no longer warrant control on the United States Munitions List (USML) and, instead, would be controlled on the Commerce Control List (CCL). The July 15 proposed rule also contained a proposal by BIS describing how military vehicles and related articles in USML Category VII that no longer warrant control under the USML would be controlled on the CCL—the military vehicles proposal was the first in a series of such proposed rules to be published by BIS.

On November 7, 2011 (76 FR 68675), and December 6, 2011 (76 FR 76072), BIS published proposed rules describing, respectively, how aircraft and related items, and gas turbine engines and related items, determined by the President to no longer warrant control under the USML would be controlled on the CCL. In the November 7 proposed rule, BIS also made several changes and additions to the framework proposed in the July 15 proposed rule.

BIS plans to publish additional proposed rules describing how certain articles that the President determines no longer warrant control on the USML (*e.g.,* submersibles, submarines, and related articles now controlled by USML Category VI or XX) would be controlled on the CCL.

BIS also plans to publish a proposed rule describing how the new controls described in this and similar notices would be implemented, such as through the use of ''grandfather'' clauses and additional exceptions. The goal of such amendments would be to give exporters sufficient time to implement the final versions of such changes and to avoid, to the extent possible, situations where transactions would require licenses from both the State Department and the Commerce Department.

Following the structure of the July 15 and November 7 proposed rules, which describe the ''export control reform initiative framework'' for controlling on the CCL articles that the President determines no longer warrant control on the USML, this proposed rule describes BIS's proposal for how another group of items—various surface vessels of war and related articles that are controlled by USML Category VI—would be controlled on the CCL. The changes described in this proposed rule and the State Department's proposed amendment to Category VI of the USML are based on a review of Category VI by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are now controlled by USML Category VI that are either: (i) Inherently military and otherwise warrant control on the USML, or (ii) if they are a type common to civil applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article satisfies either or both of those criteria, the article would remain on the USML. If an article did not satisfy either criterion, but is nonetheless a type of article that is, as a result of differences in form and fit, ''specially designed'' for military applications, then it is identified in one of the new ECCNs in this proposed rule. Finally, if an article does not satisfy either of the two criteria and is not found to be ''specially designed'' for military applications, the article is not affected by this rule because such items already are not on the USML.

The licensing policies and other EAR-specific controls for such items that are also described in this proposed rule

would enhance our national security by: (i) Allowing for greater interoperability with our NATO and other allies while maintaining and expanding robust controls that, in some instances, would include prohibitions on exports or reexports destined for other countries or intended for proscribed end-users and end-uses; (ii) enhancing our defense industrial base by, for example, reducing the current incentives for foreign companies to design out or avoid U.S.-origin ITAR-controlled content, particularly with respect to generic, unspecified parts and components; and (iii) permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end users, and end uses of greater concern than our NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall review the USML ''to determine what items, if any, no longer warrant export controls under'' the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must ''describe the nature of any controls to be imposed on that item under any other provision of law.'' 22 U.S.C. 2778(f)(1). This proposed rule describes how certain surface vessels of war and related articles in USML Category VI would be controlled by the EAR and identified on the CCL, if the President determines that the articles no longer warrant control on the USML. The Department of Commerce is publishing, in conjunction with this proposed rule on December 23, 2011, a proposed rule that will describe how submersible vessels, oceanographic and associated equipment that the President determines no longer warrant control on the USML Category VI or XX would be controlled on the CCL under new ECCNs 8A620, 8B620, 8D620, and 8E620.

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that: (i) Would be moved from the USML to the CCL or (ii) are listed on the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) and are already controlled elsewhere on the CCL. The proposed rule referred to this series as the ''600 series'' because the third character in each of the new ECCNs would be a ''6.'' The first two characters of the 600 series ECCNs serve the same function as described for any other ECCN in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN.

BIS will publish additional **Federal Register** notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish, concurrently, proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

Modifications to Provisions in the July 15 Proposed Rule

In addition to the proposals mentioned above, this proposed rule would make the following modifications to the July 15 proposed rule:

- Addition of the new Category 8 (600 series) ECCNs to § 742.6(a)(1).

These modifications are described in the section ''Scope of this Proposed Rule.''

The comment period for the July 15 Proposed Rule closed on September 13, 2011. BIS will consider comments on the July 15 proposals only for the specific paragraph, note, and ECCNs referenced above, and only within the context of this proposed rule's modifications to them.

Scope of This Proposed Rule

This proposed rule would create five new 600 series ECCNs in CCL Category 8—8A609, 8B609, 8C609, 8D609, and 8E609—that would control articles the President determines no longer warrant control under USML Category VI. The proposed changes are discussed in more detail, below.

New Category 8 (600 Series) ECCNs

Certain surface vessels of war and related articles that the President determines no longer warrant control in USML Category VI would be controlled under proposed new ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609. These new ECCNs follow the 600 series construct identified in the July 15 proposed rule.

Paragraph .a of ECCN 8A609 would control surface vessels of war that are ''specially designed'' for military use, but not enumerated in the USML or elsewhere on the CCL. Paragraphs .b through .w would be reserved for possible future use. Paragraph .x would consist of parts, components, accessories and attachments (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are ''specially designed'' for a commodity in paragraph .a or a defense article in USML Category VI. Paragraph .y would consist of specific types of commodities that, if specially designed for a commodity subject to control in ECCN 8A609 or a defense article in USML Category VI, warrant less strict controls because they have little or no military significance. Commodities listed in paragraph .y would be subject to antiterrorism (AT Column 1) controls, which currently impose a license requirement for five countries. A license also would be required, in accordance with the July 15 proposed rule, if commodities listed in paragraph .y were destined to the People's Republic of China for a military end use as described in § 744.21 of the EAR.

This proposed rule does not add gas turbine engines for military vessels of war to the proposed new ECCN 8A609. Instead, the Administration issued a separate proposed rule, on December 6, describing the U.S. Government's controls on gas turbine engines and related items for military aircraft, ships, and vehicles that no longer warrant control under the USML or an existing 018 ECCN on the CCL. Similarly, this proposed rule does not address military submersible vessels of war, submarines, and related articles that no longer warrant control under the USML—BIS will address controls on these items in a separate proposed rule.

ECCN 8B609.a would control test, inspection, and production ''equipment'' ''specially designed'' for the ''development'' or ''production'' of surface vessels of war and related commodities enumerated in ECCN 8A609 (except for items in 8A609.y) or in USML Category VI. Paragraphs .b through .x and paragraphs .y.1 through .y.98 would be reserved for possible future use.

ECCN 8C609.a would control materials ''specially designed'' for the ''development'' or ''production'' of surface vessels of war and related commodities enumerated in ECCN 8A609 that are not specified elsewhere on the CCL, such as in Category 1, or on the USML. Paragraphs .b through .x of

ECCN 8C609 would be reserved for possible future use. USML subcategory XIII(f) would continue to control structural materials ''specifically designed, developed, configured, modified, or adapted for defense articles,'' such as warships and vessels of war controlled by USML subcategory VI(a). The State Department plans to publish a proposed rule that would make USML Category XIII(f) a more positive list of controlled structural materials. Commerce will publish a corresponding proposed rule under which ECCN 8C609 would control any materials ''specially designed'' for USML Category VI or ECCN 8A609 that would no longer be controlled by the revised XIII(f).

ECCN 8D609.a would control ''software'' ''required'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in 8A609, 8B609, or 8C609. Paragraphs .b through .x of ECCN 8D609 would be reserved for possible future use. ECCN 8D609.y would control specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in ECCN 8A609.y, 8B609.y, or 8C609.y.

ECCN 8E609.a would control ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of items enumerated in ECCN 8A609, 8B609, 8C609, or 8D609, except for items enumerated in 8A609.y, 8B609.y, 8C609.y, or 8D609.y. Paragraphs .b through .x of ECCN 8E609 would be reserved for possible future use. ECCN 8E609.y would control specific ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of items enumerated in ECCN 8A609.y, 8B609.y, 8C609.y, or 8D609.y.

In addition, ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609 would each contain a special paragraph designated ''.y.99.'' Paragraph .y.99 would control any item that meets all of following criteria: (i) The item is not listed on the CCL; (ii) the item was previously determined to be subject to the EAR in an applicable commodity jurisdiction determination issued by the U.S. Department of State; and (iii) the item would otherwise be controlled under one of these Category 8, 600 series, ECCNs because, for example, the item was ''specially designed'' for a military use. Items in these .y.99 paragraphs would be subject to antiterrorism controls.

Corresponding Amendments

As discussed in further detail below, the July 15 proposed rule stated that one reason for control for items classified in the 600 series is Regional Stability (specifically, RS Column 1). Items classified under proposed ECCN 8A609, ECCN 8B609, or ECCN 8C609, other than ECCN 8A609.y, 8B609.y, or 8C609.y items, as well as related technology and software classified under ECCNs 8D609 and 8E609, would be controlled for this reason, among others. Correspondingly, this proposed rule would revise § 742.6 of the EAR to apply the RS Column 1 licensing policy to commodities classified under ECCN 8A609, 8B609, 8C609 (except paragraphs .y of those ECCNs), and to related software and technology classified under ECCNs 8D609 and 8E609. Note that the proposed rule on military aircraft and related items that BIS published on November 7 would amend the RS Column 1 licensing policy to impose a general policy of denial for ''600 series'' items if the destination is subject to a United States arms embargo.

Relationship to the July 15 Proposed Rule

As referenced above, the purpose of the July 15 proposed rule is to establish within the EAR the framework for controlling on the CCL articles that the President determines no longer warrant control on the USML. To facilitate that goal, the July 15 proposed rule contains definitions and concepts that are meant to be applied across Categories. However, as BIS undertakes rulemakings to move specific types of articles from the USML to the CCL, if and after the President determines that such articles no longer warrant control under the USML, there may be unforeseen issues or complications that require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011. In the November 7 proposed rule, BIS proposed several changes to those definitions and concepts. The comment period for the November 7 proposed rule closed on December 22, 2011.

To the extent that this rule's proposals affect any provision in the July 15 proposed rule or the July 15 proposed rule's provisions affect this proposed rule, BIS will consider comments on those provisions so long as they are within the context of the changes proposed in this rule. For example, BIS will consider comments on how the movement of Category VI items from the USML to the CCL affects a definition, restriction, or provision that was contained in the July 15 proposed rule. BIS will also consider comments on the impact of a definition of a term in the July 15 proposed rule when that term is used in this proposed rule. BIS will not consider comments of a general nature regarding the July 15 proposed rule that are submitted in response to this rulemaking.

BIS believes that the following provisions of the July 15 proposed rule and the November 7 proposed rule on aircraft and related items are among those that could affect the items covered by this proposed rule:

- *De minimis* provisions in § 734.4;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20;
- Change to national security licensing policy in § 742.4;
- Requirement to request authorization to use License Exception STA (strategic trade authorization) for end items in 600 series ECCNs and procedures for submitting such requests in §§ 740.2, 740.20, 748.8 and Supp. No. 2 to part 748;
- Addition of 600 series items to Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use Requirement of § 744.21; and
- Definitions of terms in § 772.1.

BIS believes that the following provisions of this proposed rule are among those that could affect the provisions of the July 15 and November 7 proposed rules:

- Additional 600 series items identified in the RS Column licensing policy described in § 742.6.

Effects of This Proposed Rule

BIS believes that the principal effect of this rule will be to provide greater flexibility for exports and reexports to NATO member countries and other multiple-regime-member countries of items the President determines no longer warrant control on the United States Munitions List. This greater flexibility will be in the form of: application of the EAR's *de minimis* threshold principle for items constituting less than a *de minimis* amount of controlled U.S.-origin content in foreign made items; availability of license exceptions, particularly License Exceptions RPL (servicing and replacement of parts and equipment) and STA (strategic trade authorization); elimination of the requirements for manufacturing license agreements and technical assistance agreements in connection with exports of technology; and a reduction in, or elimination of, exporter and manufacturer registration requirements and associated registration

fees. Some of these specific effects are discussed in more detail below.

De minimis

Section 734.3 of the EAR provides, *inter alia,* that under certain conditions items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a ''*de minimis*'' percentage of controlled U.S. origin content. Depending on the destination, the *de minimis* percentage can be either 10 percent or 25 percent. If the July 15 proposed rule's amendments at § 734.4 of the EAR are adopted, the new ECCNs 8A609, 8B609, 8C609, 8D609 and 8E609 proposed in this rule would be subject to the *de minimis* provisions set forth in the July 15 proposed rule, because they would be ''600 series'' ECCNs. Foreign-made items incorporating items controlled under the new ECCNs would become eligible for *de minimis* treatment at the 10 percent level (*i.e.,* a foreign-made item is not subject to the EAR if the value of its U.S.-origin controlled content does not exceed 10 percent of foreign-made item's value). The AECA does not permit the ITAR to have a *de minimis* treatment for these USML-listed items, regardless of the significance or insignificance of the item, meaning that items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made item, regardless of the percentage of U.S. origin content in the foreign-made item. In addition, foreign-made items that incorporate any items that are currently classified under an 018 ECCN and that are moved to a new 600 series ECCN would be subject to the EAR if those foreign-made items contained more than 10 percent U.S.-origin controlled content, regardless of the destination and regardless of the proportion of the U.S.-origin controlled content accounted for by the former 018 ECCN items.

Based on the July 15 rule's proposals, foreign-made items that contain controlled U.S.-origin content classified under non-600 series ECCNs, as well as 600 series ECCNs, would potentially have to be evaluated in two stages to determine whether they would qualify for *de minimis* treatment. First, the value of the 600 series ECCN content would have to be calculated. If the value of the 600 series ECCN content exceeds 10 percent of the value of the foreign-made item, the item would not qualify for *de minimis* treatment and would be subject to the EAR. However, if the value of the 600 series ECCN content does not exceed 10 percent of the value of the foreign-made item, then the value of all of the controlled U.S. origin content (including both non-600 series and 600 series ECCN content) would have to be calculated to determine whether the foreign made item's total U.S. origin controlled content exceeds the *de minimis* percentage (either 10 percent or 25 percent) applicable to the country of destination. BIS is reviewing comments that the public submitted with respect to this proposal and plans to publish another proposed rule that addresses these comments and other related issues.

Use of License Exceptions

The July 15 proposed rule would impose certain restrictions on the use of license exceptions for items that would be controlled under the new 600 series ECCNs on the CCL. For example, proposed § 740.2(a)(12) would make 600 series items that are destined for a country subject to a United States arms embargo ineligible for shipment under a license exception, except where authorized by License Exception GOV under § 740.11(b)(2)(ii) of the EAR. In addition, the use of License Exception GOV for 600 series commodities would be limited to situations in which the United States Government is the consignee and end user or to situations in which the consignee or end user is the government of a country listed in § 740.20(c)(1). With respect to License Exception STA, the July 15 proposed rule would (i) limit eligibility for ''end items'' in 600 series ECCNs to those end items for which a specific request for License Exception STA eligibility (filed in conjunction with a license application) has been approved and (ii) require that the end item be for ultimate end use by a foreign government agency of a type specified in the July 15 proposed rule. The July 15 proposed rule also would limit exports of 600 series parts, components, accessories, and attachments under License Exception STA for ultimate end use by the same set of end users and limit the shipment of 600 series items under License Exception STA to destinations listed in § 740.20(c)(1).

BIS believes that, even with the July 15 and November 7 proposed restrictions on the use of license exceptions for 600 series items, the restrictions on those items currently on the USML would be reduced, particularly with respect to exports to NATO members and multiple-regime member countries, if those items are moved from the USML to proposed ECCN 8A609.

Making U.S. Export Controls More Consistent with the Wassenaar Arrangement Munitions List Controls

The Administration has stated, since the beginning of the Export Control Reform Initiative, that the reforms will be consistent with the obligations of the United States to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. For example, the proposed ECCN 8A609 tracks, to the extent possible, the numbering structure and text of WAML category 9 pertaining to surface vessels of war not subject to the ITAR. It also implements in 8A609.x the controls in WAML category 16 for forgings, castings, and other unfinished products; in 8B609.a the controls in WAML category 18 for production equipment; in 8D609 the applicable controls in WAML category 21 for software; and in 8E609 the applicable controls in WAML category 22 for technology.

Other Effects

Pursuant to the framework identified in the July 15 proposed rule, commodities classified under ECCN 8A609 (other than ECCN 8A609.y), along with related test inspection and production equipment, materials, software, and technology classified under ECCN 8B609, 8C609, 8D609 or 8E609 (except items classified under the .y paragraphs of these ECCNs) would be subject to the licensing policies that apply to items controlled for national security reasons, as described in § 742.4(b)(1)—specifically, NS Column 1 controls. All commodities in ECCN 8A609 (other than those identified in 8A609.y, which are controlled for AT Column 1 anti-terrorism reasons only and may also be subject to the prohibitions described in Part 744), along with related test, inspection and production equipment, materials, software and technology classified under ECCN 8B609, 8C609, 8D609 or 8E609 (except items classified under the .y paragraphs of these ECCNs), would be subject to the regional stability licensing policies set forth in § 742.6(a)(1)—specifically, RS Column 1.

The July 15 proposed rule would change § 742.4 to apply a general policy of denial to 600 series items for destinations that are subject to a United States arms embargo. That policy would apply to all items controlled for national security (NS) reasons under this proposed rule. The November 7 proposed rule would expand that

general policy of denial to include 600 series items subject to the licensing policies that apply to items controlled for regional stability reasons, as described in § 742.6(b)(1)—specifically, RS Column 1. While this change might seem redundant for the items affected by this proposed rule, it ensures that a general denial policy would apply to any 600 series items that are controlled for missile technology (MT) and regional stability (RS) reasons, but not for national security (NS) reasons (as would be the case for certain items affected by the aircraft rule).

Jurisdictional and Classification Status of Items Subject to Previous Commodity Jurisdiction Determinations

The Administration recognizes that some items that would fall within the scope of the proposed new ECCNs will have been subject to commodity jurisdiction (CJ) determinations issued by the United States Department of State. The State Department will have either determined that the item was subject to the jurisdiction of the ITAR or that it was not. (See 22 CFR §§ 120.3 and 120.4). Under this proposed rule, items that the State Department determined to be not subject to the ITAR and that are not described on the CCL would be subject to the AT-only controls of the ''.y.99'' paragraph of a 600 series ECCN if they would otherwise be within the scope of the ECCN. Thus, for example, ECCN 8A609.x would control any part, component, accessory, or attachment not specifically identified in the USML or elsewhere in the ECCN if it was ''specially designed'' for a surface vessel of war. However, any part, component, accessory or attachment, which is determined by CJ not to be subject to the ITAR and is (as defined) ''specially designed'' for a surface vessel of war, would be controlled under 8A609.y.99 if it is not identified elsewhere on the CCL. If the item is controlled, either as a matter of law or as the result of a subsequent commodity classification (''CCATS'') determination by Commerce, under an ECCN that is currently on the CCL (*e.g.,* ECCN 8A992.f), that ECCN would continue to apply to the item. This general approach will, pending public comment, be repeated in subsequent proposed rules pertaining to other categories of items.

If, however, the State Department had made a CJ determination that a particular item was subject to the jurisdiction of ITAR but that item is not described on the final, implemented version of a revised USML category, a new CJ determination would not be required unless there is doubt about the application of the new USML category to the item. (See 22 CFR 120.4). Thus, unless there are doubts about the jurisdictional status of a particular item, exporters and reexporters would be entitled to rely on the revised USML categories when making jurisdictional determinations, notwithstanding past CJ determinations that, under the previous version of the USML, the item was ITAR controlled.

Finally, if the State Department had made a CJ determination that a particular item was subject to the jurisdiction of the ITAR and that item remains in the revised USML, the item would remain subject to the jurisdiction of the ITAR.

Section-by-Section Description of the Proposed Changes

- Section 742.6—ECCNs 8A609, 8B609, 8C609, 8D609 and 8E609 are added to § 742.6(a)(1) to impose an RS Column 1 license requirement and licensing policy, including a general policy of denial in Section 742.6(b)(1) for applications to export or reexport ''600 series'' items to destinations that are subject to a United States arms embargo.
- Supplement No. 1 to part 774—Adds ECCNs 8A609, 8B609, 8C609, 8D609 and 8E609.

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before February 6, 2012. All comments (including any personally identifying information or information for which a claim of confidentially is asserted either in those comments or their transmittal emails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

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 extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing + System (control number 0694–0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694–0137).

As stated in the proposed rules published at 76 FR 41958 (July 15, 2011), 76 FR 68675 (November 7, 2011), 76 FR 76072 (December 6, 2011), and 76 FR 76085 (December 6, 2011) and in the proposed rule on submersible vessels, oceanographic and associated equipment that is being published in conjunction with this proposed rule on December 23, 2011, BIS believes that the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694–0088.

Some items formerly on the USML would become eligible for License Exception STA under this rule. Other such items may become eligible for License Exception STA upon approval of a request submitted in conjunction with a license application. As stated in the July 15 and November 7 proposed

rules published by BIS, in the two proposed rules that BIS published on December 6, and in the proposed rule on submersible vessels, oceanographic and associated equipment that BIS is publishing in conjunction with this proposed rule on December 23, 2011, BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions @ 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on surface vessels of war and related parts, components, production equipment, materials, software, and technology. The largest impact of the proposed rule would be with respect to exporters of parts and components because, under the proposed rule, most U.S. and foreign military vessels of war currently in service would continue to be subject to the ITAR. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports to integrators for U.S government equipment and most exports of routine maintenance parts and components for our NATO and other close allies require State Department authorization. In addition, the exports necessary to produce parts and components for defense articles in the inventories of the United States and its NATO and other close allies require State Department authorizations. Under the EAR, as proposed, a small number of low level parts would not require a license to most destinations. Most other parts, components, accessories, and attachments would become eligible for export to NATO and other close allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. It is, however, the Administration's understanding that complying with the requirements of STA is likely to be less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply allied and, in some cases, U.S forces with routine replacement parts and components.

Even in situations in which a license would be required under the EAR, the burden likely will be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 8E609 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, *i.e.,* Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certifiedto the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification is provided below.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) would be revised to be a ''positive'' list, *i.e.,* a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control Classification Numbers (ECCNs) known as the ''600 series'' ECCNs. In addition, some items currently on the Commerce Control List would move from existing ECCNs to the new 600 series ECCNs. In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR. This rule focuses on Category VI articles, which are surface vessels of war and related parts, components, production equipment, software, and technology. Most operational military vessels of war currently in active inventory would remain on the USML. However, parts and components, which are more likely to be produced by small businesses than are complete military vessels of war, would in many cases become subject to the EAR. In addition, officials of the Department of State have informed BIS that license applications for such parts and components are a high percentage of the license applications for USML articles review by that department. Changing the jurisdictional status of Category VI items would reduce the burden on small entities (and other entities as well) through: (i) Elimination of some license requirements, (ii) greater availability of license exceptions, (iii) simpler license application procedures, and (iv) reduced, or eliminated, registration fees.

In addition, parts and components controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item. This discourages foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR may reduce the incentive for foreign manufacturers to refrain from

purchasing U.S.-origin parts and components.

Parts and components identified in ECCN 8A609.y would be designated immediately as parts and components that, even if specially designed for a military use, have little or no military significance. These parts and components, which under the ITAR require a license to nearly all destinations, would, under the EAR, require a license to only five destinations and, if destined for a military end use, to the People's Republic of China.

Many exports and reexports of the Category VI articles that would be placed on the CCL by this rule, particularly parts and components, would become eligible for license exceptions that apply to shipments to United States Government agencies, shipments valued at less than $1,500, parts and components being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would need. License Exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the United States government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license would be required, the process would be simpler and less costly under the EAR. When a USML Category VI article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the license procedure for UMSL articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant must caveat all sales presentations with a reference to the need for government approval and is more likely to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a specified consignee over the life of a license (normally two years, but may be longer if circumstances warrant a longer period), thus reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule would transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at $2,500 per year, increase to $2,750 for organizations applying for one to ten licenses per year and further increases to $2,750 plus $250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. There are no registration or application processing fees for applications to export items listed on the CCL. Once the Category VI items that are the subject to this rulemaking are moved from the USML to the CCL, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of USML licenses those entities need declines. If an entity's entire product line is moved to the CCL, its ITAR registration and registration fee requirement would be eliminated entirely.

De minimis treatment under the EAR would become available for all items that this rule would transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product regardless of the percentage of U.S content in that foreign made product. Foreign-made products incorporating items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeds 10 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to refrain from purchasing such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

For items currently on the CCL that would be moved from existing ECCNs to the new 600 series, license exception availability would be narrowed somewhat and the applicable *de minimis* threshold for foreign-made products containing those items would in some cases be reduced from 25 percent to 10 percent. However, BIS believes that increased burden imposed by those actions will be offset substantially by the reduction in burden attributable to the moving of items from the USML to CCL and the compliance benefits associated with the consolidation of all WAML items subject to the EAR in one series of ECCNs.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 742 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are proposed to be amended as follows:

PART 742—[AMENDED]

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

2. Section 742.6 is amended by revising paragraph (a)(1) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 (except 0A606.b and .y); 0B521; 0B606 (except 0B606.y); 0C521; 0C606 (except 0C606.y); 0D521; 0D606 (except 0D606.y); 0E521; 0E606 (except 0E606.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only ''software'' for the ''development'' or ''production'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only ''software'' for the ''use'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only ''software'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A002.e or 6A998.b); 6E001 (only ''technology'' for ''development'' of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only ''technology'' for ''production'' of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only ''technology'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11–00100–100/101 and QRS11–0050–443/569 Micromachined Angular Rate Sensors); 7D001 (only ''software'' for ''development'' or ''production'' of items in 7A001, 7A002, or 7A003); 7E001 (only ''technology'' for the ''development'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only ''technology'' for the ''production'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only ''technology'' for the ''use'' of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft); 8A609 (except 8A609.y); 8B609 (except 8B609.y); 8C609 (except 8C609.y); 8D609 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8E609 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 9A610 (except 9A610.y); 9A619 (except 9A619.y); 9B610 (except 9B610.y); 9B619 (except 9B619.y); 9C610 (except 9C610.y); 9C619 (except 9C619.y); 9D610 (except software for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y); and 9E619 (except ''technology'' for the ''development,'' ''production'' operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).

* * * * *

PART 774—[AMENDED]

3. The authority citation for 15 CFR part 774 continues to read as follows:

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

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8A609 between ECCNs 8A018 and 8A992 to read as follows:

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

* * * * *

8A609 Surface vessels of war and related commodities.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 8A609.y.	NS Column 1.
RS applies to entire entry except 8A609.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

License Exceptions

LVS: $1,500.

GBS: N/A.

CIV: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 8A609. Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for any ''end item'' in 8A609, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for ''600 series'' end items). See § 740.20(g) for the procedures to follow if you wish to request new STA eligibility for ''end items'' under this ECCN 8A609 as part of an export, reexport, or transfer (in-country) license application. ''End items'' under this entry that have already been determined to be eligible for License Exception STA are listed in Supplement No. 4 to part 774 and on the BIS Web site at *www.bis.doc.gov.* Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 8A609.x without the need for a determination described in § 740.20(g).

List of Items Controlled

Unit: Items in number; parts, components, accessories and attachments in $ value.

Related Controls: (1) Surface vessels of war and special naval equipment, and technical data (including software), and services directly related thereto, described in 22 CFR part 121, Category VI, Surface Vessels of War and Special Naval Equipment are subject to the

jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items. (3) For controls on diesel engines and electric motors for surface vessels of war subject to the EAR, see ECCN 8A992.g. (4) For controls on military gas turbine engines and related items for vessels of war, see ECCN 9A619 (as published on December 6, 2011, at 76 FR 76072, in a separate proposed rule that addresses gas turbine engines for military vehicles, vessels of war, and aircraft).

Related Definitions: N/A.

Items:

a. Surface Vessels of war ''specially designed'' for a military use and not enumerated in the USML.

Note: 8A609.a includes: (i) underway replenishment ships, (ii) surface vessel and submarine tender and repair ships, (iii) non-submersible submarine rescue ships, (iv) other auxiliaries (*e.g.,* AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, and AVT), (v) amphibious warfare craft except those that are armed; or (vi) unarmored, and unarmed coastal, patrol, roadstead, and Coast Guard and other patrol craft with mounts or hard points for firearms of .50 caliber or less.

b. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories and attachments'' that are ''specially designed'' for a commodity enumerated in ECCN 8A609 or a defense article enumerated in USML Category VI and not specified elsewhere in the CCL or the USML.

Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 8A609.x are controlled by ECCN 8A609.x.

Note 2: ''Parts,'' ''components,'' ''accessories and attachments'' specified in USML subcategory VI(g) are subject to the controls of that paragraph. ''Parts,'' ''components,'' ''accessories and attachments'' specified in ECCN 8A609.y are subject to the controls of that paragraph.

y. Specific ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' for a commodity subject to control in this ECCN or for a defense article in USML Category VI and not elsewhere specified in the USML or the CCL, as follows:

y.1. Ship service hydraulic and pneumatic systems;

y.2. Internal communications systems;

y.3. Filters and filter assemblies for hydraulic, oil and fuel systems;

y.4. Galleys and related equipment;

y.5. Hydraulic and fuel hoses, straight and unbent lines, fittings, clips, couplings, and brackets;

y.6. Lavatories and sanitary systems;

y.7. Magnetic compass, magnetic azimuth detector;

y.8. Medical facilities and related equipment;

y.9. Potable water storage systems;

y.10. Filtered and unfiltered panel knobs, indicators, switches, buttons, and dials;

y.11. Emergency lighting;

y.12. Analog gauges and indicators;

y.13. Audio selector panels.

y.14. to y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8A609.

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8B609 immediately following ECCN 8B001 to read as follows:

8B609 Test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 8A609 or USML Category VI, as follows.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 8B609.y.	NS Column 1.
RS applies to entire entry except 8B609.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

License Exceptions

LVS: $1,500.

GBS: N/A.

CIV: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 8B609.

List of Items Controlled

Unit: N/A.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 8A609 (except for 8A609.y) or in USML Category VI, and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor.

b. through x. [RESERVED]

y. Specific test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 8A609 (except for 8A609.y) or USML Category VI and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor, as follows:

y.1. through y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8B609.

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8C609 immediately following ECCN 8C001 to read as follows:

8C609 Materials ''specially designed'' for the ''development'' or ''production'' of commodities controlled by 8A609 not elsewhere specified in the CCL or in the USML.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 8C609.y.	NS Column 1.
RS applies to entire entry except 8C609.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

License Exceptions

LVS: $1,500.

GBS: N/A.

CIV: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 8C609.

List of Items Controlled

Unit: N/A.

Related Controls: (1) See USML Categories VI and XIII(f) for controls on materials specially designed for vessels of war enumerated in USML Category VI. (2) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A.

Items:

a. Materials ''specially designed'' for commodities enumerated in ECCN 8A609 (except for 8A609.y) not elsewhere specified in the USML or the CCL.

Note 1: Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to the controls of the applicable ECCN.

b. to .x. [RESERVED]

y. Specific materials ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 8A609 (except for 8A609.y), and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor, as follows:

y.1. through y.98 [RESERVED]

y.99. Materials not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8C609.

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8D609 between ECCN 8D002 and 8D992 to read as follows:

8D609 Software ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of surface vessels of war and related commodities controlled by 8A609, equipment controlled by 8B609, or materials controlled by 8C609.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 8D609.y.	NS Column 1.
RS applies to entire entry except 8D609.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

License Exceptions

CIV: N/A.

TSR: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any software in 8D609.

List of Items Controlled

Unit: $ value.

Related Controls: (1) Software directly related to articles enumerated in USML Category VI is controlled under USML Category VI(g). (2) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A.

Items:

a. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 8A609, ECCN 8B609, or ECCN 8C609 (except for ECCN 8A609.y, 8B609.y, or 8C609.y).

b. to x. [RESERVED]

y. Specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in ECCN 8A609.y, 8B609.y, or 8C609.y, as follows:

y.1. through y.98 [RESERVED]

y.99. Software not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8D609.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8E609 between ECCN 8E002 and 8E992 to read as follows:

8E609 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of surface vessels of war and related commodities controlled by 8A609, equipment controlled by 8B609, materials controlled by 8C609, or software controlled by 8D609.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 8E609.y.	NS Column 1.
RS applies to entire entry except 8E609.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

License Exceptions

CIV: N/A.

TSR: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in 8E609.

List of Items Controlled

Unit: N/A.

Related Controls: (1) Technical data directly related to articles enumerated in USML Category VI are controlled under USML Category VI(g). (2) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A.

Items:

a. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 8A609, 8B609, or 8C609, or ''software'' controlled by ECCN 8D609, except for ECCN 8A609.y, 8B609.y, 8C609.y, or 8D609.y.

b. through x. [RESERVED]

y. Specific ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 8A609.y, 8B609.y or 8C609.y, or ''software'' controlled by ECCN 8D609.y, as follows:

y.1. through y.98 [RESERVED]

y.99. ''Technology'' not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8E609.

Dated: December 16, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–32867 Filed 12–22–11; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742 and 774

[Docket No. 110928603–1605–02]

RIN 0694–AF39

Revisions to the Export Administration Regulations (EAR): Control of Submersible Vessels, Oceanographic Equipment and Related Articles That the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this proposed rule that describes how submersible vessels, oceanographic equipment and related articles that the President determines no longer warrant control under Category VI (Vessels of War and Special Naval Equipment) or Category XX (Submersible Vessels, Oceanographic and Associated

Equipment) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL) in new Export Control Classification Numbers (ECCNs) 8A620, 8B620, 8D620, and 8E620. In addition, this proposed rule would control closed and semi-closed circuit (rebreathing) apparatus, engines and propulsion systems for submersible vessels, and submarine and torpedo nets, which are currently controlled under ECCN 8A018, under new ECCN 8A620. With this proposed rule, BIS also would establish a new, unilateral control on submersibles ''specially designed'' for cargo transport that are not currently subject to USML or CCL controls.

This rule is one of a planned series of proposed rules that are part of the Administration's Export Control Reform Initiative under which various types of articles presently controlled on the USML under the International Traffic in Arms Regulations (ITAR) would, instead, be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR), if and after the President determines that such articles no longer warrant control on the USML.

BIS is publishing this proposed rule, on December 23, 2011, in conjunction with another proposed rule that describes how surface vessels of war and special naval equipment the President determines no longer warrant control under Category VI would be controlled on the CCL under new ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609. This proposed rule also is being published in conjunction with two proposed rules of the Department of State, Directorate of Defense Trade Controls, that would amend the list of articles controlled by USML Categories VI and Category XX, respectively. In recognition of the significant difference between surface vessels of war and submarines, the U.S. Department of State, Directorate of Defense Trade Controls, is proposing to move submarines and associated equipment from Category VI on the USML to Category XX.

DATES: Comments must be received by February 6, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* The identification number for this rulemaking is BIS–2011–0045.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AF39 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694–AF39.

FOR FURTHER INFORMATION CONTACT: Alexander Lopes, Director, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–4875, Email: *Alexander.Lopes@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) (''the July 15 proposed rule'') that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), would no longer warrant control on the United States Munitions List (USML) and, instead, would be controlled on the Commerce Control List (CCL). The July 15 proposed rule also contained a proposal by BIS describing how military vehicles and related articles in USML Category VII that no longer warrant control under the USML would be controlled on the CCL—the military vehicles proposal was the first in a series of such proposed rules to be published by BIS. With this proposed rule, BIS also would establish a new, unilateral control on submersibles ''specially designed'' for cargo transport that are not currently subject to USML or CCL controls.

On November 7, 2011 (76 FR 68675), and December 6, 2011 (76 FR 76072), BIS published proposed rules describing how aircraft and related items, and gas turbine engines and related items, respectively, determined by the President to no longer warrant control under the USML would be controlled on the CCL. In the November 7 proposed rule, BIS also made several changes and additions to the framework proposed in the July 15 proposed rule.

BIS plans to publish additional proposed rules describing how certain articles that the President determines no longer warrant control on the USML would be controlled on the CCL.

BIS also plans to publish a proposed rule describing how the new controls described in this and similar notices would be implemented, such as through the use of ''grandfather'' clauses and additional exceptions. The goal of such provisions would be to give exporters sufficient time to implement each final rule and to avoid, to the extent possible, situations where transactions would require licenses from both the State Department and the Commerce Department.

Following the structure of the July 15 and November 7 proposed rules, which describe the ''export control reform initiative framework'' for transferring certain USML items to the CCL, this proposed rule describes BIS's proposal for how another group of items—submersible vessels, oceanographic equipment and related articles that are controlled by USML Category VI or Category XX—would be controlled on the CCL. The changes described in this proposed rule and related amendments proposed by the State Department to Categories VI and XX of the USML are based on a review of these USML Categories by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are now controlled by USML Category VI or Category XX that are either: (i) Inherently military and otherwise warrant control on the USML or (ii) if they are a type common to civil applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article satisfies either or both of those criteria, the article would remain on the USML. If an article does not satisfy either criterion, but is nonetheless a type of article that is, as a result of differences in form and fit, ''specially designed'' for military applications, then it is identified in one of the new ECCNs in this proposed rule. Finally, if an article does not satisfy either of the two criteria and is not found to be ''specially designed'' for military applications, the article is not affected by this rule because such items already are not on the USML. The licensing policies and other EAR-specific controls for such items that are also described in this proposed rule would enhance our national security by: (i) Allowing for greater interoperability with our NATO and other allies while maintaining and expanding robust controls that, in some instances, would include prohibitions on exports or reexports destined for other countries or intended for proscribed end-users and end-uses; (ii) enhancing our defense industrial base by, for example, reducing the current incentives for foreign companies to design out or avoid U.S.-origin ITAR-controlled content, particularly with respect to generic, unspecified parts and

components; and (iii) permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end users, and end uses of greater concern than our NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall review the USML ''to determine what items, if any, no longer warrant export controls under'' the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must ''describe the nature of any controls to be imposed on that item under any other provision of law.'' 22 U.S.C. 2778(f)(1).

This proposed rule describes how certain submersible vessels, oceanographic equipment and related articles currently in USML Category VI or Category XX would be controlled by the EAR and identified on the CCL, if the President determines that the articles no longer warrant control on the USML. The Department of Commerce is publishing in conjunction with this proposed rule, on December 23, 2011, a proposed rule describing how surface vessels of war ''specially designed'' for a military use and not enumerated on the USML and related articles that the President determines no longer warrant control under Category VI would be controlled on the CCL under new ECCNs 8A609, 8B609, 8C609, 8D609, and 8E609.

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that: (i) Would be moved from the USML to the CCL or (ii) are listed on the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) and are already controlled elsewhere on the CCL. The proposed rule referred to this series as the ''600 series'' because the third character in each of the new ECCNs would be a ''6.'' The first two characters of the 600 series ECCNs serve the same function as described for any other ECCN in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN. However, in this proposed rule, the final two characters correspond with the USML Category XX, instead of WAML Category 20.

BIS will publish additional **Federal Register** notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish, concurrently, proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

Modifications to Provisions in the July 15 Proposed Rule

In addition to the proposals mentioned above, this proposed rule would make the following modifications to the July 15 proposed rule:

- Changes to ECCN 8A018, and
- Addition of the new Category 8 (600 series) ECCNs to § 742.6(a)(1).

These modifications are described in the section ''Scope of this Proposed Rule.'' BIS will consider comments on the July 15 proposals only for the specific paragraph, note, and ECCNs referenced above, and only within the context of this proposed rule's modifications to them.

Scope of This Proposed Rule

This proposed rule would create four new 600 series ECCNs in CCL Category 8—8A620, 8B620, 8D620, and 8E620—that would clarify the EAR controls that apply to certain submersible vessels and related items not enumerated on the USML and also impose EAR controls on harbor entrance detection devices and related articles the President determines no longer warrant control under USML Category VI. Consistent with the regulatory construct identified in the July 15 proposed rule, this rule also would move closed and semi-closed circuit (rebreathing) apparatus, engines and propulsion systems for submersible vessels, and submarine and torpedo nets, which are currently classified under ECCN 8A018, to the new ECCN 8A620. As part of the proposed changes, ECCN 8A018, as amended, would cross-reference new ECCN 8A620 and current ECCNs that control non-military submersible vehicles, oceanographic and associated equipment. As noted in the July 15 proposed rule, moving items from 018 ECCNs to the appropriate 600 series ECCNs would consolidate the WAML and former USML items into one series of ECCNs.

The review of USML Categories VI and XX by the Departments of Defense, State and Commerce resulted in a determination by the agencies that U.S. submarines, certain submersibles, oceanographic equipment and related articles controlled on the USML provide a critical military and intelligence advantage to the United States with many technologies that are exclusively available in the United States. The exclusivity of this technology and the need to preserve the tactical and strategic superiority of the U.S. submarine force has resulted in very few exports of these USML items. In view of these factors, combined with the unique and independent nature of U.S. submarine operations and a lesser need for interoperability with our NATO and other allies, the licensing jurisdiction for submersible vessels, oceanographic equipment and related articles currently controlled on the USML will remain largely unchanged. Furthermore, unlike other proposed rules that have been published as part of the Administration's Export Control Reform Initiative, this proposed rule would not affect the licensing jurisdiction of ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' for articles that would continue to be controlled under USML Category VI or Category XX—such articles would remain controlled on the USML.

Military submersibles determined by the President to meet the criteria for movement from the USML to the CCL include Deep Submergence Rescue Vehicles (DSRV) and Deep Submergence Vehicles (DSV) and their specially designed components. This proposed rule would include these items in new ECCN 8A620. In addition, submersibles that are ''specially designed'' for cargo transport, but not currently enumerated on either the USML or the CCL, have been determined to warrant control on the CCL (*e.g.,* because they are known to have been used in illegal drug trafficking activities) and would be included under new ECCN 8A620.

The proposed changes are discussed in more detail, below.

New Category 8 (600 Series) ECCNs

Harbor entrance detection devices and related articles that the President determines no longer warrant control in USML Category VI would be controlled under proposed new ECCNs 8A620, 8B620, 8D620, and 8E620. In addition, these new ECCNs would control certain submersible vessels, oceanographic equipment and related equipment that are not controlled under Category XX of

the USML. With this proposed rule, BIS thus would establish a new, unilateral control on submersibles ''specially designed'' for cargo transport that are not currently subject to USML or CCL controls. These new ECCNs follow the 600 series construct identified in the July 15 proposed rule.

Paragraph .a of ECCN 8A620 would control submersible and semi-submersible vessels ''specially designed'' for a military use, but not enumerated on the USML (DSRVs and DSVs). Paragraph .b of ECCN 8A620 would control submersible and semi-submersible vessels ''specially designed'' for cargo transport (submersible and semi-submersible vessels of a type known to have been used in illegal drug trafficking activities) and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor. Paragraph .c of ECCN 8A620 would control harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor, not elsewhere specified on the USML or the CCL. Paragraph .d of ECCN 8A620 would control certain engines and propulsion devices for submersible or semi-submersible vessels. Paragraphs .e and .f would control submarine and torpedo nets and certain closed and semi-closed circuit (rebreathing) apparatus, respectively. Paragraphs .g through .w would be reserved for possible future use. Paragraph .x would control parts, components, accessories and attachments (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are ''specially designed'' for a commodity in paragraphs .a and .c through .f; however, paragraph .x would not include items ''specially designed'' for a defense article in USML Category VI or XX. Paragraph .y would consist of specific types of commodities that, if ''specially designed'' for a commodity subject to control in ECCN 8A620, warrant less strict controls because they have little or no military significance. Commodities listed in paragraph .y would be subject to antiterrorism (AT Column 1) controls, which currently impose a license requirement for five countries. A license also would be required, in accordance with the July 15 proposed rule, if commodities listed in paragraph .y were destined to the People's Republic of China for a military end use as described in § 744.21 of the EAR.

Unlike previous proposed rules published by BIS that are part of the Administration's Export Control Reform Initiative, paragraphs .x and .y in new ECCN 8A620 would control only ''parts,'' ''components,'' ''accessories and attachments'' that are ''specially designed'' for a commodity enumerated in ECCN 8A620 and not specified elsewhere in the CCL. These paragraphs would not also control ''parts,'' ''components,'' ''accessories and attachments'' that are ''specially designed'' for a defense article on the USML (*i.e.,* a defense article in Category VI or Category XX).

This proposed rule does not add gas turbine engines for submersible or semi-submersible vessels to the proposed new ECCN 8A620. Instead, the Administration issued a separate proposed rule, on December 6, 2011 (76 FR 76072), describing the U.S. Government's controls on gas turbine engines and related items for military aircraft, ships, and vehicles that no longer warrant control under the USML or an existing 018 ECCN on the CCL. Similarly, this proposed rule does not address military surface vessels and related equipment that no longer warrant control under the USML. BIS is addressing controls on these items in a separate proposed rule that is being published in conjunction with this proposed rule on December 23, 2011.

ECCN 8B620.a would control test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 8A620 (except for items in 8A620.b and .y) and not elsewhere on the CCL or in the USML. Paragraph .b of ECCN 8B620 would control test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 8A620.b. Paragraphs .c through .x would be reserved for possible future use. ECCN 8B620.y would control specific test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 8A620 (except for items in 8A620.y) and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor. However, unlike previous Export Control Reform Initiative proposed rules published by BIS, this proposed rule would not include in paragraph .y those items that are ''specially designed'' for articles on the USML. Since this proposed rule does not list specific equipment under paragraph .y, sub-paragraphs .y.1 through y.98 would be reserved for possible future use.

This proposed rule does not add a new ECCN 8C620 to control materials, not specified elsewhere in the CCL, that are ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 8A620. In this regard, BIS understands that USML subcategory XIII(f) would continue to control structural materials ''specifically designed, developed, configured, modified, or adapted for defense articles,'' such as warships and vessels controlled by USML subcategory VI(a) or submersible vessels and related articles controlled by Category XX. The State Department plans to publish a proposed rule that would make USML subcategory XIII(f) a positive list of controlled structural materials.

ECCN 8D620.a would control ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in 8A620 (except 8A620.b and .y) or 8B620 (except 8B620.b and .y). Paragraph .b of ECCN 8D620 would control ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in 8A620.b or 8B620.b. Paragraphs .c through .x of ECCN 8D620 would be reserved for possible future use. ECCN 8D620.y would control specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in ECCN 8A620.y or 8B620.y.

ECCN 8E620.a would control ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of items enumerated in ECCN 8A620 (except 8A620.y), 8B620 (except 8B620.y), or 8D620 (except 8D620.y). Paragraph .b of 8E620 would control ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of items enumerated in ECCN 8A620.b, 8B620.b or 8D620.b. Paragraphs .c through .x of ECCN 8E620 would be reserved for possible future use. ECCN 8E620.y would control specific ''technology'' ''specially designed'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of items enumerated in ECCN 8A620.y, 8B620.y, or 8D620.y.

In addition, ECCNs 8A620, 8B620, 8D620, and 8E620 would each contain a special paragraph designated ''.y.99.'' Paragraph .y.99 would control any item that meets all of following criteria: (i) The item is not listed on the CCL; (ii) the item was previously determined to

be subject to the EAR in an applicable commodity jurisdiction determination issued by the U.S. Department of State; and (iii) the item would otherwise be controlled under one of these Category 8, 600 series, ECCNs because, for example, the item was ''specially designed'' for a military use. Items in these .y.99 paragraphs would be subject to antiterrorism (AT) controls.

This proposed rule also would affect the items currently controlled under ECCN 8A018. Specifically, engines and propulsion systems currently controlled under ECCN 8A018.b.1, .b.2, and .b.3 would be moved to new ECCN 8A620.d.1, .d.2, and .d.3, respectively. In addition, anti-submarine and anti-torpedo nets currently controlled under ECCN 8A018.b.4 would be moved to new ECCN 8A620.e and closed and semi-closed circuit (rebreathing) apparatus would be moved to new ECCN 8A620.f. In conjunction with the establishment of the new ECCN 8X620 entries, and consistent with the July 15 proposed rule's statement that 018 entries would remain in the CCL for a time, but only for cross-reference purposes, this rule would amend ECCN 8A018 to remove all language except cross references to the new 600 series ECCNs that cover the items in the new ECCN 8A620 (*i.e.,* ECCN 8A620.d, .e, and .f).

Corresponding Amendments

As discussed in further detail below, the July 15 proposed rule stated that one reason for control for items classified in the 600 series is regional stability (RS) (specifically, RS Column 1). Items classified under proposed ECCN 8A620 or ECCN 8B620, other than ECCN 8A620.y or ECCN 8B620.y items, as well as related technology and software classified under ECCNs 8D620 and 8E620, would be controlled for this reason, among others. Correspondingly, this proposed rule would revise § 742.6 of the EAR to apply the RS Column 1 licensing policy to commodities classified under ECCN 8A620 and 8B620 (except paragraphs .y of those ECCNs), and to related software and technology classified under ECCNs 8D620 and 8E620. Note that the proposed rule on military aircraft and related items that BIS published on November 7 would amend the RS Column 1 licensing policy to impose a general policy of denial for ''600 series'' items if the destination is subject to a United States arms embargo.

Relationship to the July 15 Proposed Rule

As referenced above, the purpose of the July 15 proposed rule is to establish within the EAR the framework for controlling on the CCL articles that the President determines no longer warrant control on the USML. To facilitate that goal, the July 15 proposed rule contains definitions and concepts that are meant to be applied across Categories. However, as BIS undertakes rulemakings to move specific categories of items from the USML to the CCL, if and after the President determines that such articles no longer warrant control under the USML, there may be unforeseen issues or complications that require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011. In the November 7 proposed rule, BIS proposed several changes to those definitions and concepts. The comment period for the November 7 proposed rule closed on December 22, 2011.

To the extent that this rule's proposals affect any provision in July 15 proposed rule or the July 15 proposed rule's provisions affect this proposed rule, BIS will consider comments on those provisions so long as they are within the context of the changes proposed in this rule. For example, BIS will consider comments on how the movement of Category VI and Category XX items from the USML to the CCL affects a definition, restriction, or provision that was contained in the July 15 proposed rule. BIS will also consider comments on the impact of a definition of a term in the July 15 proposed rule when that term is used in this proposed rule. BIS will not consider comments of a general nature regarding the July 15 proposed rule that are submitted in response to this rulemaking.

BIS believes that the following provisions of the July 15 proposed rule and the November 7 proposed rule on aircraft and related items are among those that could affect the items covered by this proposed rule:

- *De minimis* provisions in § 734.4;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20;
- Change to national security licensing policy in § 742.4;
- Requirement to request authorization to use License Exception STA for end items in 600 series ECCNs and procedures for submitting such requests in §§ 740.2, 740.20, 748.8 and Supp. No. 2 to part 748;
- Addition of 600 series items to Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use Requirement of § 744.21; and
- Definitions of terms in § 772.1.

BIS believes that the following provisions of this proposed rule are among those that could affect the provisions of the July 15 and November 7 proposed rules:

- Additional 600 series items identified in the RS Column licensing policy described in § 742.6.

Effects of This Proposed Rule

BIS believes that this proposed rule would have little effect, in practical terms, on exports and reexports of the items included in new ECCNs 8A620, 8B620, 8D620, or 8E620 that the President determines no longer warrant control on the USML. Unlike the previous proposed rules published by BIS that are part of the Administration's Export Control Reform Initiative and would add 600 series ECCNs to control articles the President determines no longer warrant control under the USML, this proposed rule would affect only exports and reexports of items enumerated in ECCN 8A620, ''specially designed'' ''parts,'' ''components,'' ''accessories and attachments'' therefor (as indicated in ECCN 8A620.x or .y), and related items described in ECCN 8B620, 8D620, or 8E620. This rule would not affect the licensing jurisdiction for ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' for articles that would continue to be controlled under USML Category VI or Category XX—such articles would remain controlled on the USML. Furthermore, based the licensing history for the items affected by this rule, BIS anticipates receiving an average of less than one license application per year for each type of item (*e.g.,* the items described in ECCN 8A620, including those that currently are controlled under ECCN 8A018).

In terms of specific EAR requirements, this rule would make additional items eligible for de minimis consideration under the EAR (*i.e.,* ''specially designed'' ''parts,'' ''components,'' ''accessories and attachments'' for items enumerated in ECCN 8A620.a, .b, or .c, as indicated in ECCN 8A620.x or .y—*de minimis* consideration currently is available for the ECCN 8A018 items that would be moved to ECCN 8A620.d, .e, or .f). However, items ''specially designed'' for articles that would continue to be controlled under USML Category VI or Category XX also would remain controlled on the USML. In addition, there will be greater flexibility for certain 600 series ECCN items (*i.e.,* items enumerated in ECCN 8A620.a, .b, or .c) with respect to the availability of certain license exceptions, such as License Exceptions GOV and STA. Some of these specific effects are discussed in more detail below. The

actual impact of these changes is likely to be negligible in light of the fact that BIS anticipates receiving only a limited number of license applications for such items.

De minimis

The July 15 proposed rule would impose certain unique *de minimis* requirements on items controlled under the new 600 series ECCNs. Section 734.3 of the EAR provides, *inter alia,* that under certain conditions items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a ''*de minimis*'' percentage of controlled U.S. origin content. Depending on the destination, the *de minimis* percentage can be either 10 percent or 25 percent. If the July 15 proposed rule's amendments at § 734.4 of the EAR are adopted, the new ECCNs 8A620, 8B620, 8D620 and 8E620 proposed in this rule would be subject to the *de minimis* provisions set forth in the July 15 proposed rule, because they would be ''600 series'' ECCNs. Foreign-made items incorporating items in the new ECCNs would become eligible for *de minimis* treatment at the 10 percent level (*i.e.,* a foreign-made item is not subject to the EAR, for *de minimis* purposes, if the value of its U.S.-origin controlled content does not exceed 10 percent of foreign-made item's value). In contrast, the AECA does not permit the ITAR to have a *de minimis* treatment for USML-listed items, regardless of the significance or insignificance of the U.S.-origin content or the percentage of U.S.-origin content in the foreign-made item (*i.e.,* USML-listed items remain subject to the ITAR when they are incorporated abroad into a foreign-made item, regardless of either of these factors). In addition, foreign-made items that incorporate any items that are currently classified under an 018 ECCN and that are moved to a new 600 series ECCN would be subject to the EAR if those foreign-made items contained more than 10 percent U.S.-origin controlled content, regardless of the destination and regardless of the proportion of the U.S.-origin controlled content accounted for by the former 018 ECCN items.

Use of License Exceptions

The July 15 proposed rule would impose certain restrictions on the use of license exceptions for items that would be controlled under the new 600 series ECCNs on the CCL. For example, proposed § 740.2(a)(12) would make 600 series items that are destined for a country subject to a United States arms embargo ineligible for shipment under a license exception, except where authorized by License Exception GOV under § 740.11(b)(2)(ii) of the EAR. BIS believes that, even with the July 15 and November 7 proposed restrictions on the use of license exceptions for 600 series items, the restrictions on those items currently on the USML would be reduced, particularly with respect to exports to NATO members and multiple-regime member countries, if those items are moved from the USML to proposed ECCN 8A620. BIS also believes that, in practice, the movement of items from an 018 ECCN to a new 600 series ECCN (*e.g.,* engines and propulsion systems for submersible vessels from 8A018.b.1, b.2, and .b.3 to 8A620.d.1, .d.2, and .d.3, respectively, submarine and torpedo nets from 8A018.b.4 to 8A620.e, and closed and semi-closed circuit (rebreathing) apparatus from 8A018.a to 8A620.f) would have little effect on license exception availability for those items. However, BIS is aware of two situations (the use of License Exceptions GOV and STA) in which movement of items from an 018 ECCN to a new 600 series ECCN could, in practice, impose greater limits on the use of license exceptions than currently is the case.

First, the July 15 proposed rule would limit the use of License Exception GOV for 600 series commodities to situations in which the United States Government is the consignee and end user or to situations in which the consignee or end user is the government of a country listed in § 740.20(c)(1). Currently, closed and semi-closed circuit (rebreathing) apparatus classified under ECCN 8A018.a, engines and propulsion systems classified under 8A018.b.1, b.2, or .b.3 and submarine and torpedo nets classified under ECCN 8A018.b.4, may be exported under any provision of License Exception GOV to any destination authorized by that provision if all of the conditions of that provision are met and nothing else in the EAR precludes such shipment.

Second, the July 15 proposed rule would: (i) Limit the use of License Exception STA for ''end items'' in 600 series ECCNs to those end items for which a specific request for License Exception STA eligibility (filed in conjunction with a license application) has been approved and (ii) require that the end item be for ultimate end use by a foreign government agency of a type specified in the July 15 proposed rule. The July 15 proposed rule also would limit exports of 600 series parts, components, accessories, and attachments under License Exception STA for ultimate end use by the same set of end users. Neither restriction currently applies to the use of License Exception STA for commodities classified under ECCN 8A018.a or .b, but both would apply to closed and semi-closed circuit (rebreathing) apparatus currently controlled under 8A018.a and submarine and torpedo nets currently controlled under ECCN 8A018.b.4. In addition, the July 15 proposed rule would limit the shipment of 600 series items under License Exception STA to destinations listed in § 740.20(c)(1). Currently, the commodities classified under ECCN 8A018.a or .b (which would be moved to ECCN 8A620 by this proposed rule) may be shipped under License Exception STA to destinations listed in § 740.20(c)(1) or (c)(2).

Making U.S. Export Controls More Consistent With the Wassenaar Arrangement Munitions List Controls

The Administration has stated, since the beginning of the Export Control Reform Initiative, that the reforms will be consistent with the obligations of the United States to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. For example, the proposed ECCN 8A620 tracks, to the extent possible, the numbering structure and text of WAML category 9 pertaining to submersible vessels not subject to the ITAR. It also implements in 8A620.x the controls in WAML category 16 for forgings, castings, and other unfinished products; in 8B620.a the controls in WAML category 18 for production equipment; in 8D620 the applicable controls in WAML category 21 for software; and in 8E620 the applicable controls in WAML category 22 for technology.

Other Effects

Pursuant to the framework identified in the July 15 proposed rule, commodities classified under ECCN 8A620 (other than ECCN 8A620.b and .y), along with related test inspection and production equipment, software, and technology classified under ECCN 8B620, 8D620 or 8E620 (except items classified under the .b and .y paragraphs of these ECCNs), would be subject to the licensing policies that apply to items controlled for national security (NS) reasons, as described in § 742.4(b)(1)—specifically, NS Column 1 controls. In addition, all commodities in ECCN 8A620 (other than those identified in 8A620.y, which are controlled for AT Column 1 anti-terrorism reasons only and may also be subject to the

prohibitions described in Part 744), along with related test, inspection and production equipment, software and technology classified under ECCN 8B620, 8D620 or 8E620 (except items classified under the .y paragraphs of these ECCNs), would be subject to the regional stability licensing policies set forth in § 742.6(a)(1)—specifically, RS Column 1.

The July 15 proposed rule would change § 742.4 to apply a general policy of denial to 600 series items for destinations that are subject to a United States arms embargo. That policy would apply to all items controlled for national security (NS) reasons under this proposed rule. The November 7 proposed rule would expand that general policy of denial to include 600 series items subject to the licensing policies that apply to items controlled for regional stability reasons, as described in § 742.6(b)(1)—specifically, RS Column 1. While this change might seem redundant for the items affected by this proposed rule, it ensures that a general denial policy would apply to any 600 series items that are controlled for missile technology (MT) and regional stability (RS) reasons, but not for national security (NS) reasons (as would be the case for certain items affected by the aircraft rule).

Jurisdictional and Classification Status of Items Subject to Previous Commodity Jurisdiction Determinations

The Administration recognizes that some items that would fall within the scope of the proposed new ECCNs will have been subject to commodity jurisdiction (CJ) determinations issued by the United States Department of State. The State Department will have either determined that the item was subject to the jurisdiction of the ITAR or that it was not. (See 22 CFR 120.3 and 120.4.) Under this proposed rule, items that the State Department determined to be not subject to the ITAR and that are not described on the CCL would be subject to the AT-only controls of the ''.y.99'' paragraph of a 600 series ECCN if they would otherwise be within the scope of the ECCN. Thus, for example, ECCN 8A620.x would control any part, component, accessory, or attachment ''specially designed'' for a commodity enumerated in ECCN 8A620 that is not specified elsewhere on the CCL (in this regard, note that 8A620.x would not control items ''specially designed'' for an article identified on the USML). However, any part, component, accessory or attachment that is determined by CJ not to be subject to the ITAR and is (as defined) ''specially designed'' for a submersible or semi-submersible vessel or other commodity controlled by ECCN 8A620 would be controlled under 8A620.y.99 if it is not identified elsewhere on the CCL. If the item is controlled, either as a matter of law or as the result of a subsequent commodity classification (''CCATS'') determination by Commerce, under an ECCN that is currently on the CCL (*e.g.,* ECCN 8A992.f), that ECCN would continue to apply to the item. This general approach will, pending public comment, be repeated in subsequent proposed rules pertaining to other categories of items.

If, however, the State Department had made a CJ determination that a particular item was subject to the jurisdiction of ITAR but that item is not described on the final, implemented version of a revised USML category, a new CJ determination would not be required unless there is doubt about the application of the new USML category to the item. (See 22 CFR 120.4.) Thus, unless there are doubts about the jurisdictional status of a particular item, exporters and reexporters would be entitled to rely on the revised USML categories when making jurisdictional determinations, notwithstanding past CJ determinations that, under the previous version of the USML, the item was ITAR controlled.

Finally, if the State Department had made a CJ determination that a particular item was subject to the jurisdiction of the ITAR and that item remains in the revised USML, the item would remain subject to the jurisdiction of the ITAR.

Section-by-Section Description of the Proposed Changes

• Section 742.6—ECCNs 8A620, 8B620, 8D620 and 8E620 are added to § 742.6(a)(1) to impose an RS Column 1 license requirement and licensing policy, including a general policy of denial in Section 742.6(b)(1) for applications to export or reexport ''600 series'' items to destinations that are subject to a United States arms embargo.

• Supplement No. 1 to part 774—ECCNs 8A620, 8B620, 8D620 and 8E620 would be added to Supplement No. 1 to part 774. ECCN 8A018 would be amended to remove all language except cross references to engines and propulsion systems for submersible vessels, submarine and torpedo nets, and closed and semi-closed circuit (rebreathing) apparatus that would be moved from ECCN 8A018 to proposed new ECCN 8A620 under paragraphs .d, .e, and .f, respectively.

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before February 6, 2012. All comments (including any personally identifying information or information for which a claim of confidentially is asserted either in those comments or their transmittal emails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

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 extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing + System (control number 0694–0088), which includes, among other things, license

applications, and License Exceptions and Exclusions (0694–0137).

As stated in the proposed rules published at 76 FR 41958 (July 15, 2011), 76 FR 41958 (July 15, 2011), 76 FR 68675 (November 7, 2011), 76 FR 76072 (December 6, 2011), and 76 FR 76085 (December 6, 2011) and in the proposed rule on military surface vessels and related equipment that is being published in conjunction with this proposed rule on December 23, 2011, BIS believes that the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694–0088.

Some items formerly on the USML would become eligible for License Exception STA under this rule. Other such items may become eligible for License Exception STA upon approval of a request submitted in conjunction with a license application. As stated in the July 15 and November 7 proposed rules published by BIS, in the two proposed rules that BIS published on December 6, and in the proposed rule on military surface vessels and related equipment that BIS is publishing in conjunction with this proposed rule on December 23, 2011, BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions @ 1 hour and 10 minutes each).

BIS does not expect that these changes would result in a measurable increase in burden with respect to the items affected by this proposed rule (*i.e.,* the items that would be moved from the 018 ECCNs to the new 600 series ECCNs and the items that would be included in the new 600 series ECCNs because the President determines such items no longer warrant control under the USML). The reason for this is that the export and reexport trade in the items that would be controlled under new ECCN 8A620, 8B620, 8D620, or 8E620 is very limited. In fact, BIS anticipates receiving an average of less than one license application per year for each type of item controlled under these ECCNs.

Similarly, BIS does not expect that the addition to new ECCNs 8A620, 8B620, 8D620, and 8E620 of items that the President determines no longer warrant control under the USML would result in a measurable decrease in burden, given the very limited volume of export and reexport trade in such items. Furthermore, unlike the previous proposed rules published by BIS that are part of the Administration's Export Control Reform Initiative, this proposed rule would reduce burden hours only with respect to exports and reexports of certain items enumerated in ECCN 8A620 (specifically ECCN 8A620.a, .b, and .c), ''specially designed'' ''parts,'' ''components,'' ''accessories and attachments'' therefore (as indicated in ECCN 8A620.x or .y), and related items described in ECCN 8B620, 8D620, or 8E620. This proposed rule would not affect the licensing jurisdiction for ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' for articles that would continue to be controlled under USML Category VI or Category XX—such articles would remain controlled on the USML. Therefore, the reduction in burden hours that would result from this proposed rule would be significantly less than in the previous Export Control Reform Initiative proposed rules published by BIS.

In conclusion, due to the very limited volume of export and reexport trade in the items that would be affected by this proposed rule, BIS does not expect the proposed amendments described therein to result in a measurable change in burden.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification is provided below.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) would be revised to be a ''positive'' list, *i.e.,* a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control Classification Numbers (ECCNs) known as the ''600 series'' ECCNs. In addition, some items currently on the Commerce Control List would move from existing ECCNs to the new 600 series ECCNs.

This rule addresses certain submersible and semi-submersible vessels currently enumerated in USML Category XX (*i.e.,* Deep Submergence Rescue Vehicles (DSRV) and Deep Submergence Vehicles (DSV)), certain submersible and semi-submersible vessels ''specially designed'' for cargo transport (*i.e.,* vessels not currently enumerated on either the USML or the CCL, but determined to warrant control on the CCL, because they are known to have been used in illegal drug trafficking activities), items currently controlled under ECCN 8A018 (*i.e.,* closed and semi-closed circuit (rebreathing) apparatus, engines and propulsion systems for submersible and semi-submersible vessels, and submarine and torpedo nets), and certain articles currently enumerated in USML Category VI (*i.e.,* harbor entrance detection devices and related articles).

BIS does not anticipate that the changes described in this proposed rule would have a measurable impact on small entities. This is because the export and reexport trade in the items that would be controlled under new ECCN 8A620, 8B620, 8D620, or 8E620 is very limited. In addition, this proposed rule would not affect the licensing jurisdiction for ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' for articles that would continue to be controlled under USML Category VI or Category XX. In contrast to the other proposed rules that BIS has published as part of the Administration's Export Control Reform Initiative, such articles would remain controlled on the USML. In fact, based on the licensing history of the items that would be affected by this proposed rule, BIS anticipates receiving an average of less than one license application per year for each type of item controlled under these new 600 series ECCNs.

Although BIS anticipates that the changes that would be made by this proposed rule would not have a measurable impact on the burden on small entities, changing the jurisdictional status of certain Category VI and Category XX articles would, potentially, reduce the burden on small entities (and other entities as well) through: (i) Elimination of some license requirements, (ii) greater availability of license exceptions, (iii) simpler license application procedures, and (iv) reduced, or eliminated, registration fees.

For example, parts and components identified in ECCN 8A620.y would be designated immediately as parts and components that, even if specially designed for a military use, have little or no military significance (in this regard, note that ECCN 8A620.y would control only parts or components ''specially designed'' for items that would be controlled by ECCN 8A620.a through .f—not parts and components ''specially designed'' for articles enumerated on the USML). Those parts and components identified in proposed ECCN 8A620.y that currently require a license under the ITAR to nearly all destinations would, under the EAR, require a license to only five destinations and, if destined for a military end use, to the People's Republic of China.

Certain exports and reexports of the Category VI and Category XX articles that would be placed on the CCL by this rule would become eligible for license exceptions that apply to shipments to United States Government agencies, shipments valued at less than $1,500, parts and components being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would need. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license would be required, the process would be simpler and less costly under the EAR. When a USML Category VI or Category XX article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible that the license procedure for UMSL articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. Government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant must caveat all sales presentations with a reference to the need for government approval and is more likely to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a specified consignee over the life of a license (normally two years, but may be longer if circumstances warrant a longer period), thus reducing the total number of licenses for which the applicant must apply.

For items currently on the CCL that would be moved from existing ECCNs to the new 600 series ECCNs (*i.e.,* the items currently controlled under ECCN 8A018), license exception availability would be narrowed somewhat and the applicable *de minimis* threshold for foreign-made products containing those items would in some cases be reduced from 25 percent to 10 percent. However, similar to the changes affecting the USML Category VI and Category XX articles described above, BIS anticipates that these changes would have little impact on the burden on small entities in light of the extremely limited number of exports and reexports involving the items currently controlled under ECCN 8A018.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS anticipates that none of the changes proposed by this rule would likely have a measurable impact on the burden on small entities, due to the limited number of exports and reexports involving the items that would be affected by this proposed rule. However, although BIS anticipates that the changes that would be made by this proposed rule would not have a measurable impact on the burden on small entities, changing the jurisdictional status of certain Category VI and Category XX articles would, potentially, reduce the burden on small entities by reducing the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 742 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are proposed to be amended as follows:

PART 742—[AMENDED]

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

2. Section 742.6 is amended by revising paragraph (a)(1) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 (except 0A606.b and .y); 0B521; 0B606 (except 0B606.y); 0C521; 0C606 (except 0C606.y); 0D521; 0D606 (except 0D606.y); 0E521; 0E606 (except 0E606.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only ''software'' for the ''development'' or ''production'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only ''software'' for the ''use'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only ''software'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A002.e or 6A998.b); 6E001 (only ''technology'' for ''development'' of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only ''technology'' for ''production'' of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only ''technology'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11–00100–100/101 and QRS11–0050–443/569 Micromachined Angular Rate Sensors); 7D001 (only ''software'' for ''development'' or ''production'' of items in 7A001, 7A002, or 7A003); 7E001 (only ''technology'' for the ''development'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only ''technology'' for the ''production'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only ''technology'' for the ''use'' of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft); 8A609 (except 8A609.y); 8A620 (except 8A620.y); 8B609 (except 8B609.y); 8B620 (except 8B620.y); 8C609 (except 8C609.y); 8D609 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8D620 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 8A620.y or 8B620.y); 8E609 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8E620 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 8A620.y or 8B620.y); 9A610 (except 9A610.y); 9A619 (except 9A619.y); 9B610 (except 9B610.y); 9B619 (except 9B619.y); 9C610 (except 9C610.y); 9C619 (except 9C619.y); 9D610 (except software for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y); and 9E619 (except ''technology'' for the ''development,'' ''production'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).

* * * * *

PART 774—[AMENDED]

3. The authority citation for 15 CFR part 774 continues to read as follows:

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

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, ECCN 8A018 is revised to read as follows:

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

* * * * *

8A018 Items on the Wassenaar Arrangement Munitions List.

No items currently are in this ECCN. See ECCN 8A620 for engines and propulsion systems for submersible vessels, submarine and torpedo nets, closed and semi-closed circuit (rebreathing) apparatus, and specially designed components therefor that, immediately prior to [*Insert effective date of final rule that moves these items*], were classified under ECCN 8A018. See ECCNs 8A001, 8A002 and 8A992 for controls on non-military submersible vehicles, oceanographic and associated equipment.

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8A620 between ECCNs 8A018 and 8A992 to read as follows:

8A620 Submersible vessels, oceanographic and associated equipment.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 8A620.b and .y.	NS Column 1.
RS applies to entire entry except 8A620.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

License Exceptions

LVS: $1,500.
GBS: N/A.
CIV: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 8A620. Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for any ''end item'' in 8A620, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for ''600 series'' end items). See § 740.20(g) for the procedures to follow if you wish to request new STA eligibility for ''end items'' under this ECCN 8A620 as part

of an export, reexport, or transfer (in-country) license application. ''End items'' under this entry that have already been determined to be eligible for License Exception STA are listed in Supplement No. 4 to part 774 and on the BIS Web site at *www.bis.doc.gov.* Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 8A620.x without the need for a determination described in § 740.20(g).

List of Items Controlled

Unit: Equipment in number; parts, components, accessories and attachments in $ value.

Related Controls: (1) Submersible vessels, oceanographic and associated equipment, and technical data (including software), and services directly related thereto, described in 22 CFR part 121, Category XX, Submersible Vessels, Oceanographic and Associated Equipment, are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). Parts, components, accessories, and attachments ''specially designed'' for defense articles in USML Category XX are controlled under USML sub-category XX(c). (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items. (3) For controls on non-military submersible vehicles, oceanographic and associated equipment, see ECCNs 8A001, 8A002, and 8A992.

Related Definitions: N/A.

Items:

a. Submersible and semi-submersible vessels ''specially designed'' for a military use and not enumerated in the USML.

Note: 8A620.a includes Deep Submergence Rescue Vehicles (DSRV) and Deep Submergence Vehicles (DSV).

b. Submersible and semi-submersible vessels ''specially designed'' for cargo transport and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor.

c. Harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor, not elsewhere specified on the USML or the CCL.

d. Engines and propulsion systems, as follows:

d.1. Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over ''specially designed'' for submarines;

d.2. Electric motors ''specially designed'' for submarines and having all of the following:

d.2.a. Power output of more than 1,000 hp;

d.2.b. Quick reversing;

d.2.c. Liquid cooled; and

d.2.d. Totally enclosed.

d.3. Non-magnetic diesel engines with a power output of 50 hp or more and either of the following:

d.3.a. Non-magnetic content exceeding 25% of total weight; or

d.3.b. Non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines.

Note: Other propulsion systems not specified in ECCN 8A620.d or elsewhere on the CCL (see Related Controls paragraph for this ECCN) and ''specially designed'' for an article controlled by USML Category XX are controlled by USML XX(b) or (c).

e. Submarine nets and torpedo nets.

f. Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use and not enumerated elsewhere in the CCL or in the USML, and specially designed components for use in the conversion of open-circuit apparatus to military use.

g. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories and attachments'' that are ''specially designed'' for a commodity enumerated in ECCN 8A620 (except for 8A620.b) and not specified elsewhere in the CCL.

Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 8A620.x are controlled by ECCN 8A620.x.

Note 2: ''Parts,'' ''components,'' ''accessories and attachments'' specified in ECCN 8A620.y are subject to the controls of that paragraph.

y. Specific ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' for a commodity subject to control in this ECCN and not elsewhere specified in the CCL, as follows:

y.1. Ship service hydraulic and pneumatic systems;

y.2. Internal communications systems;

y.3. Filters and filter assemblies for hydraulic, oil and fuel systems;

y.4. Galleys and related equipment;

y.5. Hydraulic and fuel hoses, straight and unbent lines, fittings, clips, couplings, and brackets;

y.6. Lavatories and sanitary systems;

y.7. Magnetic compass, magnetic azimuth detector;

y.8. Medical facilities and related equipment;

y.9. Potable water storage systems;

y.10. Filtered and unfiltered panel knobs, indicators, switches, buttons, and dials;

y.11. Emergency lighting;

y.12. Analog gauges and indicators;

y.13. Audio selector panels;

y.14. Atmosphere control and monitoring equipment;

y.15. Environmental control and monitoring equipment;

y.16. Trash handling systems;

y.17. Mooring, towing and dry docking equipment;

y.18. Anchoring systems;

y.19. Material corrosion and fouling control systems;

y.20. Damage control equipment.

y.21. to y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8A620

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8B620 immediately following ECCN 8B001 to read as follows:

8B620 Test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 8A620.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 8B620.b and .y.	NS Column 1.
RS applies to entire entry except 8B620.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

License Exceptions

LVS: $1,500.

GBS: N/A.

CIV: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 8B620.

List of Items Controlled

Unit: N/A.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 8A620 (except for 8A620.b and .y) and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor.

b. Test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 8A620.b and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor.

c. through x. [RESERVED]

y. Specific test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 8A620 (except for 8A620.y) and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor, as follows:

y.1. through y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8B620.

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8D620 between ECCN 8D002 and 8D992 to read as follows:

8D620 Software ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of submersible vessels, oceanographic and associated equipment controlled by 8A620 or equipment controlled by 8B620.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 8D620.b and .y.	NS Column 1.
RS applies to entire entry except 8D620.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

License Exceptions

CIV: N/A.

TSR: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any software in 8D620.

List of Items Controlled

Unit: $ value.

Related Controls: (1) Software directly related to articles enumerated in USML Category XX is controlled under USML Category XX(d). (2) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A.

Items:

a. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 8A620 or ECCN 8B620 (except for ECCN 8A620.b and .y or 8B620.b and .y).

b. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 8A620.b or ECCN 8B620.b.

c. to x. [RESERVED]

y. Specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in ECCN 8A620.y or 8B620.y, as follows:

y.1. through y.98 [RESERVED]]

y.99. Software not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8D620.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, add a new ECCN 8E620 between ECCN 8E002 and 8E992 to read as follows:

8E620 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of submersible vessels, oceanographic and associated equipment controlled by 8A620, equipment controlled by 8B620, or software controlled by 8D620.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 8E620.b and .y.	NS Column 1.
RS applies to entire entry except 8E620.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

License Exceptions

CIV: N/A.

TSR: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in 8E620.

List of Items Controlled

Unit: N/A.

Related Controls: (1) Technical data directly related to articles enumerated in USML Category XX are controlled under USML Category XX(d). (2) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A.

Items:

a. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 8A620 or 8B620 or ''software'' controlled by ECCN 8D620, except for ECCN 8A620.b and .y, 8B620.b and .y, or 8D620.b and .y.

b. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 8A620.b or 8B620.b or ''software'' controlled by ECCN 8D620.b.

c. through x. [RESERVED]

y. Specific ''technology'' ''specially designed'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 8A620.y or 8B620.y or ''software'' controlled by ECCN 8D620.y, as follows:

y.1. through y.98 [RESERVED]

y.99. ''Technology'' not identified on the CCL that (i) has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 8E620.

Dated: December 16, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–32868 Filed 12–22–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 121

RIN 1400–AC99

[Public Notice 7736]

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category VI

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category VI (surface vessels of war and special naval

equipment) of the U.S. Munitions List (USML) to describe more precisely the combatant vessels and other naval equipment warranting control on the USML.

DATES: The Department of State will accept comments on this proposed rule until February 6, 2012.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

- *Email: DDTCResponseTeam@state.gov* with the subject line, ''ITAR Amendment—Category VI.''
- *Internet:* At *www.regulations.gov,* search for this notice by using this rule's RIN (1400–AC99).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, USML Category VI.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, i.e., ''defense articles,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List in part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

Export Control Reform Update

The Departments of State and Commerce described in their respective Advanced Notices of Proposed Rulemaking (ANPRM) in December 2010 the Administration's plan to make the USML and the CCL positive, tiered, and aligned so that eventually they can be combined into a single control list (see ''Commerce Control List: Revising Descriptions of Items and Foreign Availability,'' 75 FR 76664 (December 9, 2010) and ''Revision to the United States Munitions List,'' 75 FR 76935 (December 10, 2010)). The notices also called for the establishment of a ''bright line'' between the USML and the CCL to reduce government and industry uncertainty regarding export jurisdiction by clarifying whether particular items are subject to the jurisdiction of the ITAR or the EAR. While these remain the Administration's ultimate Export Control Reform objectives, their concurrent implementation would be problematic in the near term. In order to more quickly reach the national security objectives of greater interoperability with our allies, enhancing our defense industrial base, and permitting the U.S. Government to focus its resources on controlling and monitoring the export and reexport of more significant items to destinations, end uses, and end users of greater concern than our NATO and other multi-regime partners, the Administration has decided, as an interim step, to propose and implement revisions to both the USML and the CCL that are more positive, but not yet tiered.

Specifically, based in part on a review of the comments received in response to the December 2010 notices, the Administration has determined that fundamentally altering the structure of the USML by tiering and aligning it on a category-by-category basis would significantly disrupt the export control compliance systems and procedures of exporters and reexporters. For example, until the entire USML was revised and became final, some USML categories would follow the legacy numbering and control structures while the newly revised categories would follow a completely different numbering structure. In order to allow for the national security benefits to flow from re-aligning the jurisdictional status of defense articles that no longer warrant control on the USML on a category-by-category basis while minimizing the impact on exporters' internal control and jurisdictional and classification marking systems, the Administration plans to proceed with building positive lists now and afterward return to structural changes.

Revision of Category VI

This proposed rule revises USML Category VI, covering surface vessels of war and special naval equipment, to establish a clear ''bright line'' between the USML and the CCL for the control of these articles. The proposed revision narrows the types of surface vessels of war and special naval equipment controlled on the USML to only those that warrant control under the stringent requirements of the Arms Export Control Act. It will remove from control of the USML harbor entrance detection devices formerly controlled under Category VI(d) and will no longer include submarines, which will be controlled in Category XX.

This proposed rule also revises § 121.15 to more clearly define ''surface vessels of war and special naval equipment'' for purposes of the revised USML Category VI.

The most significant aspect of this more positive, but not yet tiered, proposed USML category is that it does not contain controls on all generic parts, components, accessories, and attachments that are in any way specifically designed or modified for a defense article, regardless of their significance to maintaining a military advantage for the United States. Rather, it contains a positive list of specific types of parts, components, accessories, and attachments that continue to warrant control on the USML. All other parts, components, accessories, and attachments will become subject to the new 600 series controls in Category 8 of the CCL to be published separately by the Department of Commerce. The Administration has also proposed revisions to the jurisdictional status of certain militarily less significant end items that do not warrant USML control, but the primary impact will be with respect to current USML controls on parts, components, accessories, and attachments that no longer warrant USML control.

Definition for Specially Designed

Although one of the goals of the export control reform initiative is to describe USML controls without using design intent criteria, a few of the controls in the proposed revision nonetheless use the term ''specially

designed.'' It is, therefore, necessary for the Department to define the term. Two proposed definitions have been published to date.

The Department first provided a draft definition for ''specially designed'' in the December 2010 ANPRM (75 FR 76935) and noted the term would be used minimally in the USML, and then only to remain consistent with the Wassenaar Arrangement or other multilateral regime obligation or when no other reasonable option exists to describe the control without using the term. The draft definition provided at that time is as follows: ''For the purposes of this Subchapter, the term ''specially designed'' means that the end-item, equipment, accessory, attachment, system, component, or part (see ITAR § 121.8) has properties that (i) distinguish it for certain predetermined purposes, (ii) are directly related to the functioning of a defense article, and (iii) are used exclusively or predominantly in or with a defense article identified on the USML.''

The Department of Commerce subsequently published on July 15, 2011, for public comment, the Administration's proposed definition of ''specially designed'' that would be common to the CCL and the USML. The public provided more than 40 comments on that proposed definition on or before the September 13 deadline for comments. The Departments of State, Commerce, and Defense are now reviewing those comments and related issues, and the Departments of State and Commerce plan to publish for public comment another proposed rule on a definition of ''specially designed'' that would be common to the USML and the CCL. In the interim, and for the purpose of evaluation of this proposed rule, reviewers should use the definition provided in the December ANPRM.

Request for Comments

As the U.S. Government works through the proposed revisions to the USML, some solutions have been adopted that were determined to be the best of available options. With the thought that multiple perspectives would be beneficial to the USML revision process, the Department welcomes the assistance of users of the lists and requests input on the following:

(1) A key goal of this rulemaking is to ensure the USML and the CCL together control all the items that meet Wassenaar Arrangement commitments embodied in Munitions List Category 9 (ML9). To that end, the public is asked to identify any potential lack of coverage brought about by the proposed rules for Category VI contained in this FRN and the new Category 8 ECCNs published separately by the Department of Commerce when reviewed together.

(2) The key goal of this rulemaking is to establish a ''bright line'' between the USML and the CCL for the control of surface vessels. The public is asked to provide specific examples of vessels whose jurisdiction would be in doubt based on this revision.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. As noted above, and also without prejudice to the Department position that this rulemaking is not subject to the APA, the Department previously published a related Advance Notice of Proposed Rulemaking (RIN 1400–AC78), and accepted comments for 60 days.

Regulatory Flexibility Act

Since this proposed amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will 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 year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Order 12866

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This proposed amendment does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is proposed to be amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

2. Section 121.1 is amended by revising U.S. Munitions List Category VI to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

VI—Surface Vessels of War and Special Naval Equipment

*(a) Warships and other combatant vessels (*see* § 121.15 of this subchapter).

(b) Other vessels not controlled in paragraph (a) of this section (*see* § 121.15 of this subchapter).

(c) Developmental vessels and ''specially designed'' parts, components, accessories, and attachments therefor, developed under a contract with the U.S. Department of Defense.

(d) [Reserved]

*(e) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, and maintenance (*see* § 123.20 of this subchapter).

(f) Vessel and naval equipment components, parts, accessories, attachments, and associated equipment, as follows:

(1) hulls or superstructures ''specially designed'' for any vessels controlled in paragraph (a) of this section;

(2) hulls or superstructures having armor, active protection systems, or developmental armor systems;

(3) hulls or superstructures designed to survive 12.5% or greater damage across the length as measured between perpendiculars;

(4) propulsion and supporting auxiliary, control, and monitoring systems that store, create, distribute, conserve, transfer, and use energy outside propulsion system boundaries exceeding 30MJ storage, discharge less than 3 seconds and cycle time under 45 seconds, and parts and components ''specially designed'' therefor;

(5) shipborne auxiliary systems for Chemical, Biological, Radiological, and Nuclear (CBRN) compartmentalization, over-pressurization and filtration systems, and parts and components ''specially designed'' therefor;

*(6) control and monitoring systems for autonomous unmanned vessels capable of on-board, autonomous perception and decision-making necessary for the vessel to navigate while avoiding fixed and moving hazards, and obeying rules-of-the-road without human intervention;

*(7) any machinery, device, component, or equipment specifically developed, designed, or modified for use in plants or facilities controlled in paragraph (e) of this section (*see* § 123.20 of this subchapter);

(8) components, parts, accessories, attachments, and equipment ''specially designed'' for integration of articles controlled by Categories II, IV, or XVIII or catapults for launching aircraft or arresting gear for recovering aircraft;

(9) shipborne active protection systems (*i.e.,* defensive systems that actively detect and track incoming threats and launch a ballistic, explosive, energy, or electromagnetic countermeasure(s) to neutralize the threat prior to contact with a vessel) and parts and components ''specially designed'' therefor;

(10) minesweeping and mine hunting equipment (including mine countermeasures equipment deployed by aircraft) and parts and components ''specially designed'' therefor; or

*(11) any component, part, accessory, attachment, equipment, or system that:

(i) is classified;

(ii) contains classified software;

(iii) is manufactured using classified production data; or

(iv) is being developed using classified information.

''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government.

Note 1 to paragraph (f): Parts, components, accessories, and attachments ''specially designed'' for vessels enumerated in this category but not listed in Category VI(f) are subject to the EAR under ECCN 8A609.

Note 2 to paragraph (f): For controls related to ship signature management, see also Category XIII.

(g) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category.

* * * * *

3. Section 121.15 is revised to read as follows:

§ 121.15 Surface vessels of war and special naval equipment.

(a) In Category VI, ''surface vessels of war'' means developmental, demilitarized, decommissioned, production, or inventory vessels, manned or unmanned, that:

(1) Are warships or other combatant vessels (battleships, aircraft carriers, destroyers, frigates, cruisers, corvettes, littoral combat ships, mine sweepers, mine hunters, mine countermeasure ships, dock landing ships, amphibious assault ships), or Coast Guard Cutters (with or equivalent to those with U.S. designations WHEC, WMEC, WMSL, or WPB);

(2) are foreign-origin vessels ''specially designed'' to provide functions equivalent to those of the vessels listed in (a)(1) of this section;

(3) are high-speed air cushion vessels for transporting cargo and personnel, ship-to-shore and across a beach, with a payload over 25 tons;

(4) are surface vessels integrated with nuclear propulsion systems;

(5) are armed or are ''specially designed'' to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (*e.g.,* firing lasers, launching torpedoes, rockets, or missiles, or firing munitions greater than .50 caliber); or

(6) incorporate any ''mission systems'' controlled under this subchapter. ''Mission systems'' are defined as ''systems'' (*see* § 121.8(g) of this subchapter) that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

(b) Vessels ''specially designed'' for military use that are not identified in (a) of this section are subject to the EAR under ECCN 8A609.

Dated: December 16, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–32865 Filed 12–22–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

22 CFR Parts 121, 123, 124, and 125

RIN 1400–AD01

[Public Notice 7737]

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XX

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category XX (submersible vessels and related articles) of the U.S. Munitions List (USML).

DATES: The Department of State will accept comments on this proposed rule until February 6, 2012.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

- *Email: DDTCResponseTeam@state.gov* with the subject line, ''ITAR Amendment—Category XX.''
- *Internet: At www.regulations.gov,* search for this notice by using this rule's RIN (1400–AD01).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCResponseTeam@state.gov.* Attn: Regulatory Change, USML Category XX.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, i.e., ''defense articles,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List in part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

Export Control Reform Update

The Departments of State and Commerce described in their respective Advanced Notices of Proposed Rulemaking (ANPRM) in December 2010 the Administration's plan to make the USML and the CCL positive, tiered, and aligned so that eventually they can be combined into a single control list (*see* ''Commerce Control List: Revising Descriptions of Items and Foreign Availability,'' 75 FR 76664 (December 9, 2010) and ''Revision to the United States Munitions List,'' 75 FR 76935 (December 10, 2010)). The notices also called for the establishment of a ''bright line'' between the USML and the CCL to reduce government and industry uncertainty regarding export jurisdiction by clarifying whether particular items are subject to the jurisdiction of the ITAR or the EAR. While these remain the Administration's ultimate Export Control Reform objectives, their concurrent implementation would be problematic in the near term. In order to more quickly reach the national security objectives of greater interoperability with our allies, enhancing our defense industrial base, and permitting the U.S. Government to focus its resources on controlling and monitoring the export and reexport of more significant items to destinations, end uses, and end users of greater concern than our NATO and other multi-regime partners, the Administration has decided, as an interim step, to propose and implement revisions to both the USML and the CCL that are more positive, but not yet tiered.

Specifically, based in part on a review of the comments received in response to the December 2010 notices, the Administration has determined that fundamentally altering the structure of the USML by tiering and aligning it on a category-by-category basis would significantly disrupt the export control compliance systems and procedures of exporters and reexporters. For example, until the entire USML was revised and became final, some USML categories would follow the legacy numbering and control structures while the newly revised categories would follow a completely different numbering structure. In order to allow for the national security benefits to flow from re-aligning the jurisdictional status of defense articles that no longer warrant control on the USML on a category-by-category basis while minimizing the impact on exporters' internal control and jurisdictional and classification marking systems, the Administration plans to proceed with building positive lists now and afterward return to structural changes.

Revision of Category XX

This proposed rule revises USML Category XX, covering submersible vessels and related articles. The proposed revision accounts for the movement of submarines from Category VI and consolidates the controls that will apply to all submersible vessels in a single category. In addition, naval nuclear propulsion power plants for submersible vessels controlled under Category XX, formerly controlled under Category VI(e), will now be controlled under Category XX(b).

This proposed rule also creates § 121.14 to more clearly define ''submersible vessels and related articles.''

Finally, this revision makes conforming edits to §§ 123.20, 124.2, and 125.1 (nuclear related controls).

This proposed rule controls only those parts, components, accessories, and attachments that are specifically designed for a defense article controlled in this category. All other parts, components, accessories, and attachments will become subject to the new 600 series controls in Category 8 of the CCL to be published separately by the Department of Commerce.

Definition for Specially Designed

Although one of the goals of the export control reform initiative is to describe USML controls without using design intent criteria, a few of the controls in the proposed revision nonetheless use the term ''specially designed.'' It is, therefore, necessary for the Department to define the term. Two proposed definitions have been published to date.

The Department first provided a draft definition for ''specially designed'' in the December 2010 ANPRM (75 FR 76935) and noted the term would be used minimally in the USML, and then only to remain consistent with the Wassenaar Arrangement or other multilateral regime obligation or when no other reasonable option exists to describe the control without using the term. The draft definition provided at that time is as follows: ''For the purposes of this Subchapter, the term ''specially designed'' means that the

end-item, equipment, accessory, attachment, system, component, or part (see ITAR § 121.8) has properties that (i) distinguish it for certain predetermined purposes, (ii) are directly related to the functioning of a defense article, and (iii) are used exclusively or predominantly in or with a defense article identified on the USML.''

The Department of Commerce subsequently published on July 15, 2011, for public comment, the Administration's proposed definition of ''specially designed'' that would be common to the CCL and the USML. The public provided more than 40 comments on that proposed definition on or before the September 13 deadline for comments. The Departments of State, Commerce, and Defense are now reviewing those comments and related issues, and the Departments of State and Commerce plan to publish for public comment another proposed rule on a definition of ''specially designed'' that would be common to the USML and the CCL. In the interim, and for the purpose of evaluation of this proposed rule, reviewers should use the definition provided in the December ANPRM.

Request for Comments

As the U.S. Government works through the proposed revisions to the USML, some solutions have been adopted that were determined to be the best of available options. With the thought that multiple perspectives would be beneficial to the USML revision process, the Department welcomes the assistance of users of the lists and requests input on the following:

(1) A key goal of this rulemaking is to ensure the USML and the CCL together control all the items that meet Wassenaar Arrangement commitments embodied in Munitions List Category 9 (ML9). To that end, the public is asked to identify any potential lack of coverage brought about by the proposed rules for Category XX contained in this FRN and the new Category 8 ECCNs published separately by the Department of Commerce when reviewed together.

(2) The public is asked to provide specific examples of vessels whose jurisdiction would be in doubt based on this revision.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. As noted above, and also without prejudice to the Department position that this rulemaking is not subject to the APA, the Department previously published a related Advance Notice of Proposed Rulemaking (RIN 1400–AC78), and accepted comments for 60 days.

Regulatory Flexibility Act

Since this proposed amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will 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 year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Order 12866

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This proposed amendment does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in Parts 121, 123, 124, and 125

Arms and munitions, Exports, Classified information.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 121, 123, 124, and 125 are proposed to be amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

2. Section 121.1 is amended by revising U.S. Munitions List Category XX to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

XX—Submersible Vessels and Related Articles

(a) Submersible and semi-submersible vessels (*see* § 121.14 of this subchapter) that are:

*(1) submarines;

(2) mine countermeasure vehicles;

(3) anti-submarine warfare vehicles;

(4) armed;

(5) swimmer delivery vehicles ''specially designed'' for the deployment, recovery, or support of swimmers or divers from submarines;

(6) vessels equipped with any mission systems controlled under this subchapter; or

*(7) developmental vessels developed under a contract with the U.S. Department of Defense.

*(b) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, and maintenance (*see* § 123.20 of this subchapter).

(c) Components, parts, accessories, attachments, and associated equipment ''specially designed'' for any of the articles in paragraphs (a) and (b) of this category.

Note to paragraph (c): Parts, components, accessories, and attachments that are common to vessels subject to the EAR, or that are enumerated on the CCL or elsewhere in this subchapter, are not included in this paragraph.

(d) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (*See* § 125.4 of this subchapter for exemptions.)

* * * * *

3. Section 121.14 is removed from reserved status and added to read as follows:

§ 121.14 Submersible vessels and related articles.

(a) Category XX controls developmental, demilitarized, decommissioned, production, or inventory submersible and semi-submersible vessels, manned or unmanned, tethered or untethered, that:

(1) are submarines ''specially designed'' for military use;

(2) are armed or are ''specially designed'' to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (*e.g.,* firing torpedoes, launching rockets, firing missiles, deploying mines, deploying countermeasures) or deploy military payloads;

(3) are ''specially designed'' for the deployment, recovery, or support of swimmers or divers from submarines;

(4) are integrated with nuclear propulsion systems; or

(5) incorporate any ''mission systems'' controlled under this subchapter. ''Mission systems'' are defined as ''systems'' (*see* § 121.8(g) of this subchapter) that perform specific military functions such as by providing military communication, electronic warfare, target designation, surveillance, target detection, or sensor capabilities.

(b) Submersible and semi-submersible vessels that are not identified in (a) above are subject to the EAR under Category 8.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

4. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107–228.

5. Section 123.20 is amended by revising paragraphs (a) and (c) to read as follows:

§ 123.20 Nuclear related controls.

(a) The provisions of this subchapter do not apply to equipment, technical data or services in Category VI, Category XX, and Category XVI of § 121.1 of this subchapter to the extent such equipment, technical data or services are under the export control of the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended, or is a government transfer authorized pursuant to these Acts.

* * * * *

(c) A license for the export of any machinery, device, component, equipment, or technical data relating to equipment referred to in Category VI(e) or Category XX(b) of § 121.1 of this subchapter will not be granted unless the proposed equipment comes within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the Atomic Energy Act of 1954, as amended, with the government of the country to which the Article is to be exported. Licenses may be granted in the absence of such an agreement only:

* * * * *

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT, AND OTHER DEFENSE SERVICES

6. The authority citation for part 124 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261.

7. Section 124.2 is amended by revising paragraph (c) to read as follows:

§ 124.2 Exemptions for training and military service.

* * * * *

(c) * * *

* * * * *

(5) * * *

* * * * *

(iv) Naval nuclear propulsion equipment listed in Category VI and Category XX;

* * * * *

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

8. The authority citation for part 125 continues to read as follows:

Authority: Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a.

9. Section 125.1 is amended by revising paragraph (e) to read as follows:

* * * * *

(e) The provisions of this subchapter do not apply to technical data related to articles in Category VI(e), Category XX(b), and Category XVI of § 121.1 of this subchapter. The export of such data is controlled by the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as amended.

Dated: December 16, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–32866 Filed 12–22–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–145474–11]

RIN 1545–BK71

Use of Differential Income Stream as an Application of the Income Method and as a Consideration in Assessing the Best Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, temporary regulations provide guidance on how an analysis of the differential income stream may provide a best method consideration for evaluating an application of the income method to determine taxable income in connection with a cost sharing arrangement. The text of those regulations also serves as the text of regulations that are proposed by cross-reference to the temporary regulations. This document also contains proposed regulations providing guidance on the use of the differential income stream as a specified application of the income method to determine taxable income in connection with a cost sharing arrangement.

DATES: Written or electronic comments and requests for a public hearing must be received by March 22, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–145474–11), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–145474–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–145474–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Joseph L. Tobin or Mumal R. Hemrajani, (202) 435–5265 (not a toll-free number); concerning submission of comments and/or requests for a hearing, *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking and notice of public hearing regarding additional guidance to improve compliance with, and administration of, the rules in connection with a cost sharing arrangement (CSA) were published in the **Federal Register** (70 FR 51116) (REG–144615–02) on August 29, 2005 (2005 proposed regulations). A correction to the notice of proposed rulemaking and notice of public hearing was published in the **Federal Register** (70 FR 56611) on September 28, 2005. A public hearing was held on December 16, 2005.

The Treasury Department and the IRS received numerous comments on a wide range of issues addressed in the 2005 proposed regulations. In response to these comments, temporary and proposed regulations were published in the **Federal Register** (74 FR 340–01 and 74 FR 236–01) (REG–144615–02) on January 5, 2009 (2008 temporary regulations). Corrections to the 2008 temporary regulations were published in the **Federal Register** on February 27, 2009 (74 FR 8863–01), March 5, 2009 (74 FR 9570–01, 74 FR 9570–02, and 74 FR 9577–01), and March 19, 2009 (74 FR 11644–01). A public hearing was held on April 21, 2009.

The Treasury Department and the IRS received comments on a range of issues addressed in the 2008 temporary regulations. Final regulations were issued in a previous issue of the **Federal Register** (REG–144615–02) (TD 9568) in December 2011 (final regulations). Certain guidance regarding discount rates was reserved in the final regulations because the Treasury Department and the IRS believe it is appropriate to solicit public comments on that subject matter.

Temporary regulations (TD 9569) in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the final regulations and implement the use of the differential income stream as a consideration in assessing the best method in connection with a CSA. The text of those regulations also serves as the text of the regulations contained in this document that are proposed by cross-reference to the temporary regulations (§ 1.482–7T(g)(2)(v)(B)(*2*) and (4)(vi)(F)(*2*)). This document also contains a proposed amendment to the regulations under section 482 that describes the specific application of the income method using the differential income stream (§ 1.482–7(g)(4)(v)).

Explanation of Provisions

See the Explanation of Provisions for the temporary cost sharing regulations published in this issue of the **Federal Register** for an explanation of how proposed § 1.482–7(g)(2)(v)(B)(*2*) and (4)(vi)(F)(*2*) build upon and augment § 1.482–7(g)(4)(vi)(F)(*1*) (Reflection of similar risk profiles in cost sharing alternative and licensing alternative) of the final regulations.

These proposed regulations also build upon and augment § 1.482–7(g)(4)(vi)(F)(*1*) of the final regulations by providing a new specified application of the income method. Section 1.482–7(g)(4)(v) of the proposed regulations provides that the determination of the arm's length charge for the PCT Payment can be derived by discounting the differential income stream at an appropriate rate. The differential income stream approach to determining PCT Payments depends on reliably determining the discount rate associated with the differential income stream. This, in turn, requires an understanding of the economic meaning of the differential income stream. For example, assume a CSA in which the PCT Payor does not contribute any platform or operating contributions, and undertakes only routine exploitation activities for which it anticipates a routine return. In such case, the total undiscounted anticipated profits (before PCT Payments) to the CSA in the PCT Payor's territory can be thought of as comprising the anticipated routine exploitation profits plus the anticipated development value of the cost shared intangibles in the PCT Payor's territory. Under the licensing alternative, on the other hand, the PCT Payor's total undiscounted anticipated profits consist solely of the anticipated routine exploitation profits. Thus, the differential income stream conceptually corresponds to the development value of the cost shared intangibles. For these reasons, an appropriate discount rate for the differential income stream might be determined based, for example, on the weighted average cost of capital of uncontrolled companies whose activities consist primarily of developing intangibles similar to the cost shared intangibles, and whose resources, capabilities, or rights are similar to the platform contributions and cost shared intangibles under the CSA. These proposed regulations also add § 1.482–7(g)(4)(viii) *Example 9* to illustrate this newly specified application of the income method.

Proposed Effective Dates

Prop. Treas. Reg. § 1.482–7(g)(2)(v)(B)(*2*), (4)(vi)(F)(*2*) and (viii), *Example 8* are proposed to be applied to taxable years beginning on or after *December 19, 2011.*

Prop. Treas. Reg. § 1.482–7(g)(4)(v) and (viii), *Example 9* are proposed to apply to taxable years beginning on or after the date of publication of a Treasury decision adopting such rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration (CCASBA) for comment on their impact on small businesses. CCASBA had no comments.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Treasury and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Joseph L. Tobin and Mumal R. Hemrajani, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Authority: 26 U.S.C. 7805 * * *.

Section 1.482–7 is also issued under 26 U.S.C. 482. * * *

Par. 2. Section 1.482–7 is amended by adding paragraphs (g)(2)(v)(B)(*2*), (g)(4)(v), and (g)(4)(vi)(F)(*2*), and *Examples 8* and *9* to paragraph (g)(4)(viii).

The additions read as follows:

§ 1.482–7 Methods to determine taxable income in connection with a cost sharing arrangement.

* * * * *

(g) * * *

(2) * * *

(v) * * *

(B) * * *

(2) [The text of the proposed amendment to § 1.482–7(g)(2)(v)(B)(*2*) is the same as the text of § 1.482–7T(g)(2)(v)(B)(*2*) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

(v) *Application of income method using differential income stream.* In some cases, the present value of an arm's length PCT Payment may be determined as the present value, discounted at the appropriate rate, of the PCT Payor's reasonably anticipated stream of additional positive or negative income over the duration of the CSA Activity that would result (before PCT Payments) from undertaking the cost sharing alternative rather than the licensing alternative (differential income stream). See *Example 9* of paragraph (g)(4)(viii) of this section.

* * * * *

(vi) * * *

(F) * * *

(*2*) [The text of the proposed amendment to § 1.482–7(g)(4)(vi)(F)(*2*) is the same as the text of § 1.482–7T(g)(4)(vi)(F)(*2*) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(viii) * * *

Example 8. [The text of the proposed amendment to § 1.482–7(g)(4)(viii) (Example 8) is the same as the text of § 1.482–7T(g)(4)(viii) (Example 8) published elsewhere in this issue of the **Federal Register**.]

Example 9. The facts are the same as in *Example 1,* except that additional data on discount rates are available that were not available in *Example 1.* The Commissioner determines the arm's length charge for the PCT Payment by discounting at an appropriate rate the differential income stream associated with the rights contributed by USP in the PCT (that is, the stream of income in column (11) of *Example 1*). Based on an analysis of a set of public companies whose resources, capabilities, and rights consist primarily of resources, capabilities, and rights similar to those contributed by USP in the PCT, the Commissioner determines that 15% to 17% is an appropriate range of discount rates to use to assess the value of the differential income stream associated with the rights contributed by USP in the PCT. The Commissioner determines that applying a discount rate of 17% to the differential income stream associated with the rights contributed by USP in the PCT yields a present value of $446 million, while applying a discount rate of 15% to the differential income stream associated with the rights contributed by USP in the PCT yields a present value of $510 million. Because the taxpayer's result, $464 million, is within the interquartile range determined by the Commissioner, no adjustments are warranted. See paragraphs (g)(2)(v)(B)(*2*), (g)(4)(v), and (g)(4)(vi)(F)(*1*) of this section.

* * * * *

(l) *Effective/Applicability Dates.* Treas. Reg. § 1.482–7(g)(2)(v)(B)(*2*), (g)(4)(vi)(F)(*2*) and (g)(4)(viii), *Example 8* apply to taxable years beginning on or after *December 19, 2011.* Treas. Reg. § 1.482–7(g)(4)(v) and (viii), *Example 9* apply to taxable years beginning on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–32730 Filed 12–19–11; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY–041–FOR; Docket ID OSM–2011–0020]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act'').

Wyoming proposes both revisions of and additions to its coal rules and regulations concerning ownership and control and addresses four deficiencies that were identified by OSM during the review of a previous program amendment (WY–038–FOR; Docket ID #OSM–2009–0012). Wyoming intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Wyoming program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t. January 23, 2012. If requested, we will hold a public hearing on the amendment on January 17, 2012. We will accept requests to speak until 4 p.m., m.s.t. on January 9, 2012.

ADDRESSES: You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal: www.regulations.gov.* This proposed rule has been assigned Docket ID: OSM–2011–0020. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see III. Public Comment Procedures in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *http://www.regulations.gov,* you may review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018, (307) 261–6547, *jfleischman@osmre.gov;*

John V. Corra, Director, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, (307) 777–7046, *jcorra@wyo.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Telephone: (307) 261–6547. Internet: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Description of the Proposed Amendment

By letter dated October 24, 2011, Wyoming sent us a proposed amendment to its approved regulatory program (Administrative Record Docket ID No. OSM–2011–0020) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming submitted the amendment to address required rule changes OSM identified in a letter to Wyoming dated October 2, 2009, under 30 CFR 732.17(c). These included changes to Wyoming's rules for ownership and control. The amendment also addresses four deficiencies that OSM identified in response to Wyoming's formally submitted revegetation rule package (WY–038–FOR; Docket ID #OSM–2009–0012).

Specifically, Wyoming proposes to amend the Land Quality Division Coal Rules and Regulations at Chapter 1, Section 2 (definitions related to ownership and control including ''Applicant violator system or AVS,'' ''Control or controller,'' ''Notice of violation,'' and ''Own, owner or ownership''); Chapter 2, Section 2(a)(i) and (ii) (ownership and control permit application information including identification of interests and a complete statement of compliance); Chapter 12, Section 1(a)(viii)–(xiv) (the review process, procedures, and requirements for making permit eligibility determinations including: Review of applicant and operator information, review of permit history, review of compliance history, and related AVS entry requirements); and Chapter 16, Section 2(h) and (j) (notification requirements related to Wyoming's enforcement regulations and AVS entry requirements). Wyoming also addresses four deficiencies that OSM identified in response to Wyoming's formally submitted revegetation rule package (WY–038–FOR; Docket ID #OSM–2009–0012) including; adding the term ''surface'' back into Wyoming's rules where it had been deleted and reinstating the definition of ''Surface coal mining and reclamation operations'' at Chapter 1, Section 2(ez) that had been removed from Wyoming's rules; adding the 1:24,000 scale requirement for maps that are submitted with permit applications back into Wyoming's rules at Chapter 2, Section 1(c); adding language to clarify that wildlife enhancement is not limited to revegetation efforts at Chapter 2, Section 5(a)(viii); and correcting numerous inaccurate citations to other sections of Wyoming's rules and regulations. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Wyoming program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions

on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

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 in the electronic docket for this rulemaking at *HTTP://www.regulations.gov.* While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on January 9, 2012. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is limited interest in participation in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: Novenber 1, 2011.

Kenneth Walker,

Acting Director, Western Region.

[FR Doc. 2011–32978 Filed 12–22–11; 8:45 am]

BILLING CODE 4310–05–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2012–2; Order No. 1053]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is establishing a docket to consider new measurement of Flats Sequencing Systems operations, a change in the definition of certain MODS operations, modifications to flats cost models, modification of the mail processing cost model applicable to First-Class Mail presort letters, and modification of the Business Reply Mail cost model in periodic reporting of service performance measurement. Establishing this docket will allow the Commission to consider the Postal Service's proposal and comments from the public.

DATES: *Comments are due:* December 30, 2011. *Reply comments are due:* January 9, 2012.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On November 30, 2011, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider changes in the analytical methods approved for use in periodic reporting.[1] On December 9, 2011[2] and on December 12, 2011[3] it filed errata to the attachments to the petition.

On December 7, 2011, GameFly, Inc. moved to strike from the Postal Service's petition a sentence that references GameFly and the sentence's accompanying footnote, which also references GameFly, on the ground that the references violated certain statutory privacy protections for mailers, and disclosed proprietary information.[4] On December 13, 2011, the Postal Service filed a response to the GameFly Motion.[5] In it, the Postal Service denies the substantive allegations made by GameFly, Inc. It also explains that in order to prevent delay in the processing of the original November 30, 2011

[1] Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals Sixteen through Twenty), November 30, 2011.

[2] United States Postal Service Notice of Filing of Errata to Attachments to Petition, December 9, 2011.

[3] United States Postal Service Notice of Filing of Errata to Attachments to Petition, December 12, 2011.

[4] Motion of GameFly, Inc., to Strike Portions of USPS Petition for Rulemaking, Docket No. RM2012–2, filed Dec. 7, 2011 (Motion).

[5] Response of the United States Postal Service to Motion of GameFly, Inc. to Strike Portions of USPS Petition for Rulemaking, December 13, 2011.

petition, it has re-filed that petition with the material that GameFly objects to voluntarily excised.[6] Because the Postal Service has voluntarily provided GameFly with the relief that it requests, its Motion will be dismissed as moot.

Proposal Sixteen: proposed productivity measurement for Flats Sequencing System. Proposal Sixteen introduces a new method for measuring the productivity of Flats Sequencing System (FSS) operations based upon the Management Operating Data System (MODS). The resulting productivity measurements would be used in the cost models for flats.

The calculations of avoided cost estimates used in setting discounts for presort mail are based upon engineering models that de-average the mail processing costs of presorted price categories by presort level. Petition at 3. These models diagram mailflows for the various presort price categories, and use productivities (piece handlings per workhour), at the various operations through which the mail flows. It then uses wage rates, piggyback factors, and other inputs to compute avoided costs. *Id.* The Postal Service explains that these models are periodically updated to reflect operational changes, including major equipment deployments such as FSS. *Id.*

Under Proposal Sixteen, the Postal Service develops a productivity measure for flats delivery point sequencing using Total Pieces Handled (TPH) from MODS operation 538 divided by the sum of workhours from MODS operations 530 and 538. The Postal Service states that flats to be sorted into delivery point sequence are initially prepared in operation 530, and then sorted into delivery sequence in operation 538. Since a MODS TPH count is not directly available for the 530 prep operation, the Postal Service proposes to combine hours from that operation with hours from the 538 direct sorting operation, for which a TPH count is available. The TPH count from the 538 sorting operation is divided by hours from both operations to get a combined productivity for the prep and sorting activity. *Id.*

Because the proposed FSS productivity measure for flats sequencing is new, the Postal Service states there are no data to predict the impact of the productivity measure on the calculation of avoided costs. *Id.* at 4.

Proposal Seventeen: consolidation of MODS Operation Groups applicable to letter automation productivities. In response to changes in the definition of certain MODS operations, Proposal Seventeen consolidates MODS operation groups associated with the productivity calculations for the DBCS/DIOSS automated letter image reading and sorting operations.

MODS productivities measured by either Total Pieces Fed (TPF) or Total Pieces Handled (TPH) per workhour, are available for a variety of letter, flat, and parcel distribution operations. These productivities are used as inputs to engineering cost models to calculate the costs avoided by worksharing activities for purposes of setting workshare discounts.

During FY 2011, the identification numbers for some MODS operations were discontinued, and the associated work incorporated into other MODS operations. *Id.* at 5. Specifically, workload and associated workhours for the Input Subsystem (ISS) were incorporated into the Barcode Sorting (BCS) operation groups. According to the Postal Service, ''[a] similar, though smaller, shift also affects Output Subsystem (OSS) operation groups'' which, in turn, will be consolidated with BCS operations during FY 2012.'' *Id.* The cost models will employ the productivity measures from these new consolidated operation groups once the consolidations are completed.

The Postal Service provides a table showing the current disaggregated MODS operations and the proposed aggregations. *Id.* at 6. The Postal Service also provides a table showing the change in productivities upon completion of the consolidations. *Id.*

Proposal Eighteen: modifications to the Flats cost models. Proposal Eighteen makes four modifications to the cost models for flats. Modification One incorporates FSS processing costs into the flats cost models. With deployment of FSS now complete, the Postal Service proposes to use FSS input data in the flats cost models to estimate the costs of FSS operations.

Modification Two corrects ''an anomalous'' difference in costs between Mixed Area Distribution Center (MADC) automation and Area Distribution Center (ADC) automation flats in First-Class Mail, Periodicals, and Standard Mail. *Id.* at 9–10. Currently, the costs of MADC presorted flats are less than the costs of ADC flats that receive more mailer presorting. According to the Postal Service, this anomaly occurs because single-piece mail is currently included in the downflow densities, which overstates the proportion of MADC mail that flows directly from the Outgoing Primary (OP) operation to the Incoming Secondary (IS) operation. The Postal Service proposes to adjust the downflow densities for flats to mitigate the effect of including single-piece mail using a methodology previously approved by the Commission for use in cost models for letters. *Id.* at 10.

Modification Three corrects an error in the calculation of mechanized ADC pallet bundle sortation in the cost model for Periodicals flats. Currently, cells for the coverage of mechanized ADC pallet bundle sortation are incorrectly referenced to the coverage for mechanized MADC bundle sortation. The resulting formula errors are corrected by remapping the references to the proportion of broken ADC pallet bundles.

Modification Four calculates the cost for bundles entered on MADC pallets—a newly-created classification. *Id.* at 11. As a new classification, there are no volumes in FY 2011 to estimate costs. The Postal Service proposes to ''use ADC pallets entered at the destination ADC as a proxy for MADC pallets.'' *Id.*

Proposal Nineteen: modification of the First-Class Mail Presort Letters mail processing cost model. Proposal Nineteen modifies the mail processing cost model applicable to First-Class Mail presort letters. Currently, the mail processing cost model only estimates avoided costs for the combined nonautomation machinable Mixed Automated Area Distribution Center (MAADC) and Automated Area Distribution Center (AADC) price categories. The Postal Service proposes to develop separate cost estimates for the nonautomation machinable MAADC and the AADC categories. *Id.* at 12. This proposed methodology change would be consistent with Proposal Twelve, presented in Docket No. RM2012–1, in which the Postal Service disaggregated the cost estimates for nonautomation machinable MAADC and AADC Standard Mail presort letters. *Id.*

Proposal Twenty: modification of the Business Reply Mail cost model. Proposal Twenty modifies the Business Reply Mail (BRM) cost model. The cost model develops the avoided cost estimate in support of the Qualified BRM (QBRM) barcode discount, and includes cost studies that support various annual, quarterly, monthly, and per-piece BRM fees. *Id.* at 15. The Postal Service offers Proposal Twenty in response to the Commission's request to initiate a rulemaking proceeding to address the current methodology used to develop the avoided cost estimate for the QBRM discount. *Id.*

[6] Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals Sixteen through Twenty), December 13, 2011 (Petition).

The QBRM avoided cost estimate is derived from a methodology proposed by the Postal Service in Docket No. R97–1. Based on that methodology, the Postal Service observes that the avoided cost estimate has decreased over time as the Postal Service has ''continued to capture savings as a result of * * * technological improvements'' in the recognition of handwritten addresses on reply pieces. *Id.* at 18. The mail processing cost of a handwritten reply mailpiece serves as the baseline for comparison to the mail processing costs for a QBRM reply piece to determine the avoided cost estimate. Accordingly, ''when all empirical facts are considered,'' the Postal Service ''proposes the continued use of the Docket No. R97–1 QBRM cost avoidance methodology.'' *Id.* at 18–19.

Proposal Twenty also updates and revises the productivity estimates developed in the BRM fee cost studies. In those studies, many of the productivity estimates are based upon proxies rather than direct observation or measurement of actual activities. Moreover, some of the productivity estimates that are based upon field studies are dated. *Id.* at 16.

The Postal Service relies on two studies to develop inputs used in the cost studies. The first is the BRM Practices Study, which was conducted in 2005 and presented in Docket No. R2006–1, USPS LR–L–34. *Id.* at 19. The BRM Practices Study ''measure[s] the percentage of mail by price category that is processed using various counting, rating, and billing methods.'' *Id.* It is periodically updated. Based upon recent field observations, the Postal Service states that the data inputs from the 2005 BRM Practices Study ''should be relied upon to develop the BRM fee estimates.'' *Id.* at 23.

The second study develops productivity data, representing various counting, rating, and billing activities, which have been manually collected at postal field sites. The most recent field study was conducted during the summer of 2011. *Id.* Based upon this study, the Postal Service develops productivity data for the following activities: web Business Reply Mail Accounting System counting, web End of Run counting, machine counting, manual counting, weight averaging counting (letters), weight averaging counting (flats & parcels), PostalOne! billing, and manual billing. *Id.* at 26.

Data from the 2011 Field Study were also used to develop ''minutes per day'' estimates that support the QBRM quarterly fee and revise the nonletter size BRM monthly fee cost studies.

The Petition, Attachments, and library references estimating the impact of Proposals Sixteen through Twenty are available for review on the Commission's Web site, *http://www.prc.gov.*

Pursuant to 39 U.S.C. 505, Larry Fenster is designated as Public Representative to represent the interests of the general public in this proceeding. Comments are due no later than December 30, 2011.

It is ordered:

1. The Petition of the United States Postal Service Requesting Initiation of a Proceeding To Consider Proposed Changes in Analytical Principles (Proposals Sixteen through Twenty), filed December 13, 2011, is granted.

2. The Commission establishes Docket No. RM2012–2 to consider the matters raised by the Postal Service's Petition.

3. Interested persons may submit comments on Proposals Sixteen through Twenty no later than December 30, 2011. Reply comments are due no later than January 9, 2012.

4. Larry Fenster is appointed to serve as the Public Representative to represent the interests of the general public in this proceeding.

5. The Motion of GameFly, Inc., to Strike Portions of USPS Petition for Rulemaking, Docket No. RM2012–2, filed December 7, 2011, is dismissed as moot.

6. The Secretary shall arrange for publication of this notice in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–32906 Filed 12–22–11; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0080; FRL–9610–1]

RIN 2060–AR16

National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Prepared Feeds Manufacturing; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise certain provisions of the area source national emission standards for hazardous air pollutants (NESHAP) for prepared feeds manufacturing published on January 5, 2010 (final rule). These revisions will clarify the regulatory requirements for this source category and ensure that those requirements are consistent with the record. The revisions address the generally available control technology (GACT) requirements for pelleting processes at large, existing prepared feeds manufacturing facilities, specifically removal of the cyclone 95-percent design efficiency requirement, as well as associated requirements for compliance demonstration, monitoring, reporting, and recordkeeping; clarification of the requirement that doors be kept closed in areas where materials containing chromium and manganese are stored, used, or handled; and clarification of the requirement to install a device at the point of bulk loadout to minimize emissions. These amendments are not expected to result in increased emissions or in the imposition of costs beyond those described in the January 5, 2010, final rule.

DATES: Written comments must be received by January 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0080, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*: Follow the instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web site.
- *Email: a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2008–0080 in the subject line of the message.
- *Fax:* Send comments to (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2008–0080.
- *Mail:* Area Source NESHAP for Prepared Feeds Manufacturing Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0080. The EPA's policy is that all comments received will be included in the public docket without change and

may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, see Section III of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0080. All documents in the docket are listed in the Federal Docket Management System index at *www.regulations.gov.* Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Jan King, Outreach and Information Division, Office of Air Quality Planning and Standards (C404–05), Environmental Protection Agency, Research Triangle Park, NC 27711. Telephone number: (919) 541–5665; fax number: (919) 541–0242; email address: *king.jan@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Why is the EPA issuing a proposed rule?
II. Does this action apply to me?
III. What should I consider as I prepare my comments for the EPA?
A. Submitting CBI
B. Tips for Preparing Your Comments
IV. Where can I get a copy of this document?
V. What amendments are being proposed?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Why is the EPA issuing a proposed rule?

This document proposes amendments affecting sources regulated under the area source national emission standards for hazardous air pollutants (NESHAP) for prepared feeds manufacturing published on January 5, 2010 (75 FR 522). Because we view this as a noncontroversial action and anticipate no adverse comment, we have published a direct final rule in the ''Rules and Regulations'' section of this **Federal Register** revising the generally available control technology (GACT) standard for pelleting operations at large, existing prepared feeds manufacturing facilities; clarifying the requirement to keep doors closed in areas where materials containing chromium and manganese are stored, used, and handled; and clarifying the requirement that a device of any type can be used during the bulk loadout process.

If we receive no adverse comment, we will not take further action on this proposed rule and the direct final rule will become effective on February 21, 2012 without further notice. If we receive adverse comment, we will address all public comments in any subsequent final rule based on this proposed rule. If EPA receives adverse comment by January 23, 2012 on a distinct provision of this proposed rule, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on any other provision.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

Regulated Entities. The regulated categories and entities potentially affected by the rule include:

Category	NAICS code [1]	Examples of regulated entities
Other Animal Foods Manufacturing	311119	Animal feeds, prepared (except dog and cat), manufacturing.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11619, subpart DDDDDDD (NESHAP for Area Sources: Prepared Feeds Manufacturing). If you have any questions regarding the applicability of this action to a particular entity, consult either the state delegated authority or the EPA regional representative, as listed in 40 CFR 63.13 of subparts A (General Provisions).

III. What should I consider as I prepare my comments for the EPA?

A. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (e.g., subject heading, **Federal Register** date and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. Where can I get a copy of this document?

Electronic Access. In addition to being available in the docket, an electronic copy of this direct final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Because this is an amendment of regulatory language through rulemaking, a redline version of the regulatory language has been created and has been placed in the docket (*http://www.regulations.gov,* see Docket No. EPA–HQ–OAR–2008–0080) to aid the public's ability to comment on the regulatory text. Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

V. What amendments are being proposed?

On January 5, 2010 (75 FR 522), the EPA promulgated the NESHAP for area source prepared feeds manufacturing facilities as subpart DDDDDDD in 40 CFR part 63. Existing affected sources (i.e., construction or reconstruction of the facility began on or before July 27, 2009) must comply with the rule by January 5, 2012, while new affected sources (i.e., construction or reconstruction of the facility began after July 27, 2009) were required to comply by January 5, 2010, or upon startup, whichever is later.

Today's proposal consists of three revisions and clarifications. The rule requires that pelleting operations at large prepared feeds manufacturing facilities (i.e., those facilities with an average daily feed production level exceeding 50 tons per day) use cyclones. In the final rule, these cyclones were required to have a 95-percent design efficiency. This proposal revises this requirement for existing sources only.[2] Such sources must use cyclones, and those cyclones must be operated in accordance with good air pollution control practices and manufacturer's specifications and operating instructions, if available, or standard operating procedures must be developed by the facility owner or operator to ensure proper operation and maintenance of the cyclone.

In the preamble to the final rule, we recognized that the cyclones employed on pelleting operations at existing, large prepared feeds manufacturing facilities were generally available and provided effective Hazardous Air Pollutant (HAP) emissions control (75 FR 533). We added the 95-percent design efficiency requirement in the final rule because we thought, based on limited data from sources that would need to install cyclones, that a large percentage of existing cyclones at large facilities already met that design efficiency (75 FR 544). In assessing the costs of the design efficiency requirement as part of our GACT analysis, we estimated that few existing sources (approximately 2 percent) did not have cyclones and would need to install them to meet the requirement (Economic Impact Analysis for the Prepared Feeds Manufacturing Area Source NESHAP, June 17, 2009, Docket No. EPA–HQ–OAR–2008–0080–0036). We also explained in the final rule that it was not our intent to force prepared feed manufacturers to replace older, well-designed, and properly operating cyclones with new high-efficiency cyclones (75 FR 533). Indeed, we recognized that requiring the replacement of older, well designed, properly operating cyclones was not cost effective, because the incremental emission reductions would be very low and the costs would be high (75 FR 533).

The EPA included in the final rule three different mechanisms by which a source could demonstrate compliance with the design efficiency requirement. 40 CFR 63.11621(e)(1)–(3). A source could show compliance by having either cyclone manufacturer certification/specifications, a certification by a professional engineer or responsible official, or a Method 5 performance test that indicates whether PM is being released from the system (Appendix A to part 60) (which determines the particulate matter mass rate at the inlet and outlet of the cyclone). The EPA has recently learned that most existing sources would need to install new cyclones to provide the required documentation for demonstrating compliance with the final rule. (Material presented by prepared feeds industry representatives at the January 25, 2011, meeting with EPA staff, and Industry Request for Administrative Stay and Reconsideration—June 10 2011, both of which are located in Docket No. EPA–HQ–OAR–2008–0080). That was not the intent of the final rule, and this result cannot be reconciled with the GACT analysis underlying the final rule.

As noted above, we premised the design efficiency requirement in the final rule for existing sources on the assumption that all but a few cyclones were meeting that requirement and that only a few sources would need to install new cyclones. Our cost analysis in the final rule tracked this assumption. We now recognize that this assumption was incorrect, and that our regulations, as written, would require many existing facilities to replace existing cyclones, which is contrary to our GACT analysis. As explained in the final rule, the replacement of older, well designed, properly operating cyclones is not cost

[2] We are not changing any requirements for new large, prepared feeds manufacturing facilities. We have amended the regulatory text to clarify that the design efficiency requirement and associated compliance mechanisms, monitoring, reporting, and recordkeeping requirements apply only to new sources.

effective (75 FR at 533). We are therefore proposing to revise the requirement of the final rule for pelleting operations at existing large, prepared feeds manufacturing facilities (i.e., those facilities with an average daily feed production level exceeding 50 tons per day) to require the use of cyclones. We are also proposing that the cyclones be operated in accordance with good air pollution control practices and manufacturer's specifications and operating instructions, if available, or standard operating procedures must be developed by the facility owner or operator to ensure proper operation and maintenance of the cyclone. These proposed revisions are wholly consistent with the record supporting the final rule, including the cost analysis and our determination that cyclones are generally available for existing sources and effectively control HAP emissions.

Further, the EPA is proposing to revise the requirements for demonstration of compliance, monitoring, and the notification, reporting and recordkeeping requirements for existing sources only, consistent with the removal of the design efficiency requirement for those sources. This action proposes to amend the notification of compliance status requirements such that the cyclone manufacturer's operating specifications or standard operating procedures developed by the prepared feeds manufacturer be required as part of the record instead of one of the cyclone parameters as specified in the final rule (i.e., inlet flow rate, inlet velocity, pressure drop, or fan amperage range). The revised annual compliance certification would include all instances when the cyclone does not operate according to manufacturer specifications or the standard operating procedures. This would replace the requirement for existing sources to include in the annual compliance certification the cyclone parameters listed in the final rule. We are also proposing to revise the recordkeeping requirements for existing sources to require the owner or operator to record the results of weekly visual inspections. This would replace the requirement in the January 5, 2010, final rule for existing sources to record the daily inlet flow rate, inlet velocity, pressure drop, or fan amperage.

This action also clarifies that the requirement to keep doors closed in areas where materials containing manganese and chromium are stored, used, or handled does not apply to areas where finished prepared feeds product is stored in closed containers, since there are no HAP emissions in these areas. See 40 CFR 63.11621(a)(iii).

Finally, there has been some confusion regarding the type of device needed to comply with the bulk loadout provision at 40 CFR 63.11621(d). These proposed amendments would clarify that any type of device may be used to minimize the distance between the place where bulk loadout occurs and the vehicle being loaded. The distance may also be minimized by the design of the loadout process itself (e.g., the loadout arm positioned directly above the vehicle being loaded).

VI. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden above that required in the original rule. The revisions do not require additional information collection requirements and may result in an overall reduction of the information collection burden. Therefore, the information collection requests are not being amended. The Office of Management and Budget (OMB) previously approved the information collection request (ICR) contained in the existing regulations (subpart DDDDDDD, 40 CFR part 63) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0635 (ICR 2354.02). The OMB control numbers for EPA's regulations in 40 CFR are listed in part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations found at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This action does not impose any additional costs over those in the final rule published on January 5, 2010 (75 FR 522). In fact, the clarifications contained in this action are expected to reduce costs for some small businesses that would otherwise have installed control equipment, but that would not be required to do so as a result of these amendments.

D. Unfunded Mandates Reform Act

This action contains no Federal mandate under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments, or the private sector. This action imposes no enforceable duty on state, local, or tribal governments, or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action imposes no obligations upon them.

E. Executive Order 13132: Federalism

This direct final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule does not impose any requirements on state and local governments. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This direct final rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This action is not subject to EO 13045 because it is based solely on technology performance.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12886.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This direct final rule makes revisions and clarifications to the rule and should not result in increased emissions beyond those described in the final rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Particulate matter, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 15, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–32830 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110816505–1734–02]

RIN 0648–BB39

Fisheries of the Northeastern United States; Northeast Multispecies Fishery Management Plan; Secretarial Amendment

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

ACTION: Proposed rule; notice of availability of a Secretarial amendment; request for comments.

SUMMARY: NMFS proposes a Secretarial Amendment to the Northeast Multispecies Fishery Management Plan to establish a mechanism for specifying annual catch limits and accountability measures for the small-mesh multispecies fishery. The Secretarial Amendment, incorporating a draft Environmental Assessment and an Initial Regulatory Flexibility Analysis, is available for public comment. NMFS is proposing this amendment because the New England Fishery Management Council has been delayed in implementing the mechanism to specify annual catch limits and accountability measures for the silver hake, red hake, and offshore hake stocks. This amendment is intended to comply with the Magnuson-Stevens Fishery Conservation and Management Act requirements for establishing a mechanism for specifying annual catch limits and accountability measures in this fishery.

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on February 21, 2012.

ADDRESSES: An environmental assessment (EA) was prepared for the Secretarial Amendment that describes the proposed action and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the Secretarial Amendment, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Daniel Morris, Acting Regional Administrator, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at *http://www.nero.noaa.gov.*

You may submit comments, identified by NOAA–NMFS–2011–0206, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter ''NOAA–NMFS–2011–0206'' in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Fax:* (978) 281–9135, Attn: Moira Kelly.
- *Mail:* Daniel Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Whiting Secretarial Amendment.''

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing

on *www.regulations.gov.* All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

SUPPLEMENTARY INFORMATION:

Background

The small-mesh multispecies complex is composed of five stocks of three species of hakes (northern silver hake, southern silver hake, northern red hake, southern red hake, and offshore hake), and the fishery is managed through a series of exemptions from the other provisions of the Northeast Multispecies Fishery Management Plan (FMP). Amendment 19 to the FMP was initiated by the New England Fishery Management Council (Council) in 2009 to establish a mechanism for specifying annual catch limits (ACLs) and accountability measures (AMs) for the small-mesh multispecies fishery as required by the 2007 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), but the Council postponed development of the amendment in order to include the results of an updated stock assessment in November 2010. Developing the amendment has been further delayed by the Council due to other pressing actions, and Amendment 19 is not scheduled to be implemented until October 2012, well past the Magnuson-Stevens Acts' deadline for implementing ACLs and AMs. NMFS has determined that it is necessary and appropriate, under section 304(c)(1)(A) of the Magnuson-Stevens Act, to develop a Secretarial Amendment in order to bring the small-mesh multispecies fishery into compliance with the Magnuson-Stevens Act requirements concerning ACLs and AMs.

To date, the Council has made a number of preliminary decisions regarding what alternatives will be included in Amendment 19. For the Secretarial Amendment, NMFS is proposing measures that are similar to those that are expected to be in Amendment 19 in order to minimize confusion and disruption for the industry when the Council's amendment, if approved, is implemented. NMFS is proposing to implement the overfishing limits (OFLs), acceptable biological catch limits (ABCs), and the ACL framework that the Council is considering for Amendment 19.

Amendment Development

When a Secretarial Amendment is being developed, according to section 304(c)(2)(A) of the Magnuson-Stevens Act, the Secretary must ''conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested parties an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan.'' In order to satisfy this requirement, NMFS published an Advanced Notice of Proposed Rulemaking (76 FR 57944) on September 19, 2011. Public hearings were held in East Setauket, NY; Toms River, NJ; Gloucester, MA; and Narragansett, RI, and public comments were accepted until October 19, 2011. In general, commenters expressed concern on what effect a stock area total allowable landings (TAL) level would have on the inshore Gulf of Maine exemption areas; how much influence the years that the Council chose for potentially sub-dividing the northern area TALs would have on future actions; and recommended that any new trips limits not be too restrictive and set at such a level as to protect historical participants. NMFS took these comments into consideration during the development of the preferred alternatives and addressed the issues raised by the commenters in the EA.

Proposed Measures

The Council does not yet have a set of preferred alternatives, so NMFS is proposing the broadest, most general of the Council's current alternatives. In choosing the preferred alternatives for the Secretarial Amendment, NMFS intends to meet the requirements of the law, while preserving the Council's flexibility for measures to be proposed in Amendment 19. In doing so, NMFS considered but rejected for this amendment one of the Council's alternatives for a more complicated, sub-divided quota system in the northern area; however, this is not intended to preclude the Council from recommending this alternative in Amendment 19.

1. Mechanism for Specifying OFLs, ABCs, ACLs, TALs, and the Specification Process

The Magnuson-Stevens Act requires that each FMP establish ''a mechanism for specifying annual catch limits * * * at such a level that overfishing does not occur in the fishery, including measures to ensure accountability.'' In order to do that for the small-mesh multispecies fishery, the first step is to estimate the OFL for each stock. The OFL is the amount of catch above which overfishing is deemed to be occurring, that is, it is a status determination criterion for overfishing. It is an annual limit derived as the product of current exploitable biomass and the current rate of fishing, after taking into account the variance of each factor. To calculate this, the Council's Small-Mesh Multispecies Plan Development Team (PDT) derived a distribution of the OFL, and the OFL is equal to the 50th percentile of that distribution. The 3-year moving average biomass estimate for silver hake is estimated using the fall trawl survey; and the 3-year moving average biomass estimate for red hake is estimated using the spring trawl survey, based on guidance from the Council's Scientific and Statistical Committee (SSC) and the November 2010 stock assessment. No reliable estimates for offshore hake are available. For fishing years 2012–2014, the OFLs would be as follows:

TABLE 1—FISHING YEARS 2012–2014 OFLS

	OFL (mt)	OFL (lb)
Northern Red Hake	314	692,252
Northern Silver Hake	24,840	54,762,830
Southern Red Hake	3,448	7,601,539
Southern Silver Hake	62,301	137,350,200

The second step in establishing ACLs is to account for uncertainty in the OFL estimate by estimating the acceptable biological catch, or ABC. ABC is the level of catch that accounts for scientific uncertainty in the estimate of the OFL and any other scientific uncertainty. Based on guidance from the SSC, the ABCs would be based on the OFLs and would be set equal to the 40th percentile of the OFL distribution for both red hake stocks, and the 25th percentile for both silver hake stocks (Table 2). In order to account for offshore hake, which are caught incidentally in the southern silver hake fishery and are marketed together as ''whiting,'' the southern silver hake ABC would be increased by 4 percent.

TABLE 2—FISHING YEARS 2012–2014 ABCS

	OFL	Percentile of OFL distribution	Percent of OFL	ABC
Northern Red Hake	314 mt (692,252 lb)	40th	89.17	280 mt (617,294 lb).
Northern Silver Hake	24,840 mt (54,762,830 lb)	25th	53.05	13,177 mt (2,9050,310 lb).
Southern Red Hake	3,448 mt (7,601,539 lb)	40th	94.52	3,259 mt (7,184,865 lb).
Southern Whiting*	62,301 mt (137,350,200 lb)	25th	54.48	33,940 mt (74,824,890 lb).

* Southern Whiting ABC = Silver Hake 25th percentile of OFL (32,635 mt) + 4% (1,305 mt).

The final step in estimating the ACLs, after estimating OFL and ABC, as described above, is to take into account any uncertainty in the ability of managers to effectively implement the recommended catch levels. The Council has recommended that ACLs for the small-mesh multispecies fishery be set equal to 95 percent of the corresponding ABC to account for management uncertainty. The mechanism to establish ACLs for the small-mesh multispecies fishery results in four ABCs (northern red hake, northern silver hake, southern red hake, and southern whiting), set below their respective OFLs to account for scientific uncertainty, and four corresponding ACLs, set below ABC to account for management uncertainty, where ACL = 95 percent ABC (Table 3.)

TABLE 3—FISHING YEARS 2012–2014 ABCS AND ACLS FOR SMALL-MESH MULTISPECIES

	ABC	ACL (95% of ABC)
Northern Red Hake	280 mt (617,294 lb)	266 mt (586,430 lb).
Northern Silver Hake	13,177 mt (2,9050,310 lb)	12,518 mt (27,597,470 lb).
Southern Red Hake	3,259 mt (7,184,865 lb)	3,096 mt (6,825,512 lb).
Southern Whiting	33,940 mt* (74,824,890 lb)	32,243 mt (71,083,650 lb).

* Southern Whiting ABC = Silver Hake 25th percentile of OFL (32,635 mt) + 4% (1,305 mt).

This action would also implement TALs on a stock area basis, with southern silver and offshore hake combined. This would result in four TALs (Table 4) that relate directly to the ACLs recommended by the SSC and the Council. Discards and a state landings estimate would be deducted from the ACLs, and stock area TALs would be used as the management limit. At its September 2011 meeting, the Council recommended a 3-percent allowance for state landings. The Council also recommended using a discard estimate based on the average discards from 2008–2010 for all stocks.

TABLE 4—FISHING YEAR 2012–2014 ACLS AND TALS

	Northern Red Hake	Northern Silver Hake	Southern Red Hake	Southern Whiting
ACL	266 mt	12,518 mt	3,096 mt	32,243 mt.
State Landings (3%)	3.35 mt	281.65 mt	33.44 mt	841.54 mt.
Discard Percentage 2008–2010.	58%	25%	64%	13%.
Discards	154.28 mt	3,129.5 mt	1,981.44 mt	4,191.59 mt.
Total Federal TAL (mt)	108 mt	9,106 mt	1,081 mt	27,084 mt.
Total Federal TAL (lb)	238,099 lb	20,075,290 lb	2,383,197 lb	59,710,000 lb.

Specifications Process

Specifications would be set on a 3-year cycle, starting with the first year of implementation of the Secretarial Amendment. This process would update the OFLs, ABCs, ACLs, and TALs based on the most recent available information using the framework mechanisms described above. Data that should be available for the specifications setting process should include, but not limited to, new survey biomass indices, reported landings, estimated discards, and estimates of state-waters landings.

The Council, the Small-Mesh Multispecies Plan Development Team (PDT), and the Small-Mesh Multispecies Oversight Committee would monitor the status of the small-mesh multispecies fishery and resource. The Small-Mesh Multispecies PDT would meet to review the status of the stocks and the fishery. Based on this review, the PDT would provide a report to the Council on any changes or new information about the small-mesh multispecies stocks and/or fishery, and it should recommend whether the specifications for the upcoming year(s) need to be modified. If necessary, the Small-Mesh Multispecies PDT would provide advice and recommendations to the Small-Mesh Multispecies Oversight Committee and the Council regarding the need to adjust measures for the small-mesh multispecies fishery to better achieve the FMP's objectives.

The PDT's recommendations would include the following information: OFL and ABC estimates for the next 3 fishing years, based on the control rules; ACLs that are set equal to 95 percent of the corresponding ABC; TALs that are calculated using an estimate of discards based on the most recent 3-year moving average for which data are available and an appropriate estimate of state-waters landings; an evaluation of catches compared to the ABCs in recent years; and any other measures that the PDT determines are necessary to successfully implement the ACL framework, including, but not limited to, adjustments to the management uncertainty buffer between ABC and ACL.

The PDT would provide these recommendations to the SSC for review. The SSC would either approve the PDT's recommendations or provide alternative recommendations to the Council. The Council would then consider the SSC's and PDT's recommendations and make a decision on the specifications for the next 3 fishing years. The Council must establish ACLs that are equal to or lower than the SSC's recommended ABCs. Once the Council has approved ACLs, they would be submitted to NMFS for approval and implementation. After receipt of the Council's ACLs, NMFS would review the recommendations and implement the ACLs in a manner consistent with the Administrative Procedure Act, if it is determined that the ACLs are consistent with applicable law. If the ACLs are determined to be inconsistent with applicable law, NMFS may publish alternative specifications that do not exceed the SSC's recommendations and are consistent with applicable law. If new ACLs are not implemented for the start of the new specifications cycle, the old ACLs would remain in effect until they are replaced.

2. Accountability Measures

NMFS is proposing both a proactive (in-season) and a reactive (post-season) AM framework for the small-mesh multispecies fishery. NMFS intends for the two AMs to complement each other and to work jointly to ensure that the catch limits are not exceeded, and if they are, to mitigate the potential harm to the small-mesh multispecies stocks.

In-Season AM: Incidental Possession Limit Trigger

This action proposes an AM that would reduce the possession of a particular stock to an incidental level when a trigger limit for that stock's TAL is projected to be reached. Under this approach, even if the TAL is exceeded, the possession limit would remain at the incidental level until the end of the fishing year. Based on a review of recent data and recommendations for the Council's Whiting Oversight Committee, NMFS is proposing the following incidental limits and triggers (Table 5).

TABLE 5—POTENTIAL INCIDENTAL POSSESSION LIMITS AND TRIGGERS

	% of TAL	Incidental limit	
Red Hake	90	400 lb	181.44 kg.
Silver Hake	90	1,000 lb	453.59 kg.

The Council's Whiting Oversight Committee recommended at its November 3, 2011, meeting that the Council's draft Amendment 19 include a range of incidental limits for comment at public hearings. The Whiting Oversight Committee has recommended 200, 300, or 400 lb (90.72, 136.08, or 181.44 kg) as the range of potential incidental limits for red hake. The Whiting Oversight Committee has also recommended 500, 1,000, or 2,000 lb (226.80, 453.59, or 907.18 kg) as the range of potential incidental limits for silver hake.

NMFS reviewed recent vessel trip report data (2006–2010) for the Secretarial Amendment. For red hake, 62.5 percent of trips that landed at least 1 lb (0.45 kg) of red hake with a small-mesh otter trawl landed 400 lb (181.44 kg) or less. The landings level for 45-percent of all trips landing at least 1 lb (0.45 kg) of red, silver, or offshore hake with a small-mesh otter trawl was less than 400 lb (181.44 kg); 1,000 lb (453.59 kg) represents nearly two-thirds of all trips. This suggests that 400–1,000 lb (181.44–453.59 kg) is roughly the current level of landings on a small-mesh trip, and that 100–400 lb (45.36–181.44 kg) is approximately the current incidental landing level for all gear types. That is, this is already the incidental level that vessels are landing, without a possession limit dictating that level.

Post-Season AM: Pound-for-Pound Payback of an ACL Overage

This AM would authorize NMFS, through the Northeast Regional Administrator, to deduct from a subsequent year's ACL any overage of a stock's ACL in a given year. In the Northeast Region, there have been two approaches to this type of management measure. For some fisheries, an overage in year 1 is deducted from the ACL in year 2. In other fisheries, the overage from year 1 is deducted from the ACL in year 3. For the small-mesh multispecies fishery, NMFS is proposing the latter approach. ACL overages that occur in one year would be deducted from the ACL in the second year after the overage occurred (i.e., year 3). This approach is recommended for the small-mesh multispecies fishery because the small-mesh multispecies fishery in the northern area is restricted by the groundfish regulations in area and season. An in-season adjustment to

an ACL might result in some exemption areas opening, while others would not. This also allows vessel owners the opportunity to prepare for the reduction with ample time to adjust their business plans.

Other Alternatives Considered

NMFS also analyzed and considered other alternatives for management measures to complement the OFL, ABC, and ACL framework described above. As required, NMFS considered and analyzed the status quo/no action alternatives for implementing a stock area TAL and a post-season AM. Alternatives considered for in-season AMs included the status quo/no action alternative, a zero possession when 100 percent of a TAL is projected to be harvested alternative, and an alternative that combined the 90-percent trigger and incidental possession limit alternative, described above, and the zero possession at 100 percent of the TAL alternative. Details of these alternatives and analysis are included in the Secretarial Amendment and EA.

Classification

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

Public comments on the Secretarial Amendment and its incorporated documents may be submitted through the end of the comment period stated in this notice of availability. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability and proposed rule to be considered in the decision on the amendment. To be considered, comments must be received by close of business on the last day of the comment period. See **ADDRESSES** for more information on public comments.

The Office of Management and Budget has determined that this proposed rule is not significant for the purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), which is included in the Secretarial Amendment and supplemented by information contained in the preamble to this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the Regional Administrator (see **ADDRESSES**).

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses ($4.0 million in annual gross sales). Therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery is not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities To Which the Rule Would Apply

In order to fish for small-mesh multispecies, a vessel owner must be issued either a limited access northeast multispecies permit or an open access category K Northeast multispecies permit; however, there are many vessels issued both of these types of permits that may not actually fish for small-mesh multispecies. Although some firms own more than one vessel, available data make it difficult to reliably identify ownership control over more than one vessel. For this analysis, the number of permitted vessels landing small-mesh multispecies is considered to be a maximum estimate of the number of small business entities that may be impacted. The average number of permitted vessels landing at least 1 lb (0.45 kg) of silver hake or red hake from 2005–2010 was 562 vessels per year.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

In general, the economic impacts of the proposed actions are neutral to slightly negative, compared to the status quo/no action alternatives and the other alternatives considered. For northern silver hake, southern red hake, and southern whiting, the proposed catch and landing limits are much higher than recent catch and landings. The recent catch of northern red hake is above the proposed ACL, but recent landings are slightly below the proposed TAL. Given the timing constraints in developing the Secretarial Amendment and the preliminary decisions made by the Council for Amendment 19, the only other alternative that was considered for the ACL and catch limit framework was the status quo/no action alternative. In the short term, the status quo/no action, which is not legally consistent with the Magnuson-Stevens Act, would likely result in neutral impacts to the human communities involved in the small-mesh multispecies fishery. In the long-term, however, the possibility of fishing above the recommended levels may result in negative impacts to the human communities if a small-mesh multispecies stock is fished at an unsustainable level.

Also based on the Council's preliminary decisions for Amendment 19 and the timing constraints associated with the Secretarial Amendment, only the proposed reactive AM (pound-for-pound payback) and the status quo/no action alternative were considered. Not implementing a reactive accountability measure would have a neutral impact to vessels targeting small-mesh multispecies stocks because there is no change from the current management. It is possible, however, that by exceeding the ACL on a regular basis, long-term impacts on the stock could lead to long-term economic losses due to changes in the stock size. The proposed pound-for-pound payback alternative may result in short-term negative impact on the small-mesh multispecies industry by potentially reducing ACLs in the future, if an ACL is exceeded. However, the long-term impacts of maintaining catch within the recommended levels would be positive.

The proposed alternative that is most likely to have an impact in the foreseeable future is the 90-percent trigger AM for northern red hake. Using vessel trip report data from 2006–2010, a 400-lb (181.44-kg) incidental possession limit in the northern stock area, implemented when 90 percent of the northern red hake TAL is projected to be harvested, would have impacted approximately 23 trips per year, and an average of 7 vessels per year. At a loss of approximately $282 per trip, this AM would have cost the fleet $6,486 per year in lost northern red hake revenue. This may not be a true revenue loss, however. Red hake is rarely the primary target species and vessel owners are likely to shift effort onto another routinely landed incidental species, such as skates or dogfish, to finish their trip. The other in-season AM alternatives considered for this amendment included zero possession at 100 percent of the TAL, a combination of the 90-percent trigger and zero

possession at 100 percent of the TAL alternatives, and the status quo/no action alternative. The zero possession at 100 percent of the TAL alternative would likely have negative economic impacts on the small-mesh multispecies fleet. Because northern red hake is the only stock where the TAL is likely to be harvested in the near future, the Secretarial Amendment focused on the likely impacts of the alternatives to that stock. Based on 2009 vessel trip report data for northern red hake, the fishery would have harvested the proposed TAL by early September. This would have resulted in approximately $29,544 in lost revenue for the fleet (estimated at $0.37/lb for the 79,849 lb (36,219 kg) of northern red hake landed in excess of the proposed TAL (238,099 lb (108,000 kg)) for fishing year 2009). However, these losses may not be realized, as vessels may redirect the effort that would have been used to land red hake onto another incidental species, such as skates or dogfish. The impacts from the combined 90-percent trigger and zero possession at 100 percent of the TAL alternative would likely be the same as the 90-percent trigger alternative itself, as the possession limit would reduce landings such that the TAL would not likely be harvested prior to the end of the fishing year. Not implementing a proactive AM (i.e., the status quo/no action alternative) would have a neutral impact to vessels targeting small-mesh multispecies stocks because there is no change from the current management. It is possible, however, that by exceeding the recommended landing level on a regular basis, long-term impacts on the stock could lead to long-term economic losses due to changes in the stock size.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 20, 2011.

Samuel D. Rauch III,

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

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.80, paragraphs (a)(8)(iii) and (a)(16)(iii) are revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

(a) * * *

(8) * * *

(iii) For exemptions allowing no incidental catch of regulated species, as defined under paragraph (a)(8)(i) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(c), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species. For exemptions allowing incidental catch of regulated species, as defined under paragraph (a)(8)(ii) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(c), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery.

* * * * *

(16) * * *

(iii) *Annual review.* On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action prior to the next fishing year through the framework adjustment process specified in § 648.90(c), and in accordance with the Administrative Procedure Act.

* * * * *

3. In § 648.86, paragraph (d)(4) is added to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(d) * * *

(4) *In-season adjustment of small-mesh multispecies possession limits.* If the Regional Administrator projects that 90 percent of a stock area TAL, as defined in § 648.90(b)(3), has been landed, the Regional Administrator shall reduce the possession limit of that stock described in paragraphs (d)(4)(i) and (ii) of this section, for the remainder of the fishing year through notice consistent with the Administrative Procedure Act, unless such a reduction in the possession limit would be expected to prevent the TAL from being reached.

(i) *Red hake.* If a possession limit reduction is needed for a stock, the incidental possession limit for red hake in that stock area will be 400 lb (181.44 kg) for the remainder of the fishing year.

(ii) *Silver hake.* If a possession limit reduction is needed for a stock, the incidental possession limit for silver hake in that stock area will be 1,000 lb (453.59 kg) for the remainder of the fishing year.

* * * * *

4. In § 648.90, the introductory paragraph is revised, and paragraphs (b) and (c)(1)(ii) are revised to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

For the NE multispecies framework specification process described in this section, the regulated species and ocean pout biennial review is considered a separate process from the small-mesh species annual review, as described in paragraphs (a)(2) and (b)(1), respectively, of this section. In addition, the process for specifying ABCs and associated ACLs for regulated species and ocean pout, as described in paragraph (a)(4) of this section, is considered a separate process from the small-mesh species ABC and ACL process described in paragraph (b)(2) of this section.

* * * * *

(b) *Small-mesh multispecies.*—(1) *Three-year specifications process, annual review, and Stock Assessment and Fishery Evaluation.* The Council will specify on at least a 3-year basis the OFL, ABC, ACLs, and TALs for each small-mesh multispecies stock in accordance with the following process.

(i) At least every three years, based on the annual review, described below in paragraph (b)(3) of this section, and/or the SAFE Report described in paragraph (b)(4) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee (SSC), and any other relevant information, the Small-Mesh Multispecies PDT will recommend to the Small-Mesh Multispecies Oversight Committee and Council specifications including the OFL, ABC, ACL and TAL for each small-mesh multispecies stock the following specifications for a period of at least 3-year. The Small-Mesh Multispecies PDT and the Council will follow the process in paragraph (b)(2) of

this section for setting these specifications.

(ii) The Small-Mesh Multispecies PDT, after its review of the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

(iii) Taking into account the annual review and/or SAFE Report described in paragraph (b)(2) of this section, the advice of the SSC, and any other relevant information, the Small-Mesh Multispecies PDT may also recommend to the Small-Mesh Multispecies Oversight Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of small-mesh multispecies. These adjustments may be included in the Council's specifications for the small-mesh multispecies fishery.

(iv) *Council recommendation.* (A) The Council will review the recommendations of the Small-Mesh Multispecies PDT, Small-Mesh Multispecies Oversight Committee, and SSC, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded.

(B) The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will consider the recommendations and publish a rule in the **Federal Register** proposing specifications and associated measures, consistent with the Administrative Procedure Act.

(C) The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the **Federal Register** differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws.

(D) If the final specifications are not published in the **Federal Register** for the start of the fishing year, the previous year's specifications will remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(2) *Process for specifying ABCs, ACLs and TALs.* The Small-Mesh Multispecies PDT will calculate the OFL and ABC values for each small-mesh multispecies stock based on the control rules established in the FMP. These calculations will be reviewed by the SSC, guided by terms of reference developed by the Council. The ACLs and TALs will be calculated based on the SSC's approved ABCs, as specified in paragraphs (a)(2)(i)(A) through (C), and (a)(2)(ii)(A) through (C) of this section.

(i) *Red hake*—(A) *ABCs.* The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of red hake. The red hake ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFL.

(B) *ACLs.* The red hake ACLs are equal to 95 percent of the corresponding ABCs.

(C) *TALs.* The red hake TALs are equal to the ACLs minus a discard estimate based on the most recent 3 years of data. The red hake TALs are then reduced by 3 percent to account for red hake landings that occur in state waters.

(ii) *Silver and Offshore Hake*—(A) *ABCs.* The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of silver hake. The ABC for the southern stock of silver hake will be increased by 4 percent to account for catch of offshore hake. The silver hake and offshore hake combined ABC will be the southern whiting ABC. The silver hake and whiting ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFLs.

(B) *ACLs.* The northern silver hake and southern whiting ACLs are equal to 95 percent of the ABCs.

(C) *TALs.* The northern silver hake and southern whiting TALs are equal to the northern silver hake and southern whiting ACLs minus a discard estimate based on the most recent 3 years data. The northern silver hake and southern whiting TALs are then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(3) *Annual Review.* (i) The Small-Mesh Multispecies PDT will meet at least once annually to review the status of the stock and the fishery and the adequacy of the 3-year specifications. Based on such review, the PDT will provide a report to the Council on any changes or new information about the small-mesh multispecies stocks and/or fishery, and it will recommend whether the specifications for the upcoming year(s), established pursuant to paragraph (b)(1) of this section, need to be modified. At a minimum, this review should include a review of at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of small-mesh multispecies; and any other relevant information.

(ii) If new and/or additional information becomes available, the Small-Mesh Multispecies PDT will consider it during this annual review. Based on this review, the Small-Mesh Multispecies PDT will provide guidance to the Small-Mesh Multispecies Oversight Committee and the Council regarding the need to adjust measures for the small-mesh multispecies fishery to better achieve the FMP's objectives. After considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the process specified in paragraph (c) of this section, or through an amendment to the FMP.

(4) *SAFE Report.* (i) The Small-Mesh Multispecies PDT will prepare a SAFE Report at least every 3 years. Based on the SAFE Report, the Small-Mesh Multispecies PDT will develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The SAFE Report will be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the small-mesh multispecies fishery. The SAFE Report will provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(ii) In any year in which a SAFE Report is not completed by the Small-Mesh Multispecies PDT, the annual review process described in paragraph (a) of this section will be used to recommend any necessary adjustments

to specifications and/or management measures in the FMP.

(5) *Accountability measures for the small-mesh multispecies fishery.*—(i) *In-season adjustment of possession limits.* When the Regional Administrator projects that 90 percent of a small-mesh multispecies TAL has been landed, the Regional Administrator may, through notice consistent with the Administrative Procedure Act, reduce the possession limit of that stock to the incidental level, as specified in § 648.86(d)(4), for the remainder of the fishing year.

(ii) *Post-season adjustment for an overage.* If NMFS determines that a small-mesh multispecies ACL was exceeded in a given fishing year, the exact amount of the landings overage will be deducted, as soon as is practicable, from a subsequent single fishing year's ACL for that stock, through notification consistent with the Administrative Procedure Act.

(c) * * *

(1) * * *

(ii) *Adjustment process for whiting DAS.* The Council may develop recommendations for a whiting DAS effort reduction program through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

* * * * *

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket Number FSIS–2011–0029]

RIN 0583–AD40

2012 Rate Changes for the Basetime, Overtime, Holiday, and Laboratory Services Rates

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMMARY: The Food Safety and Inspection Service (FSIS) is announcing the 2012 rates that it will charge meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services. The 2012 basetime, overtime, holiday, and laboratory services rates will be applied on the first FSIS pay period at the beginning of the calendar year, January 1, 2012.

DATES: FSIS will charge the rates announced in this notice beginning January 1, 2012.

FOR FURTHER INFORMATION CONTACT: For further information contact Michael Toner, Director, Budget Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2159 South Building, 1400 Independence Avenue SW., Washington, DC 20250–3700; telephone (202) 720–8700, fax (202) 690–4155.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2011, FSIS published a final rule amending its regulations to establish formulas for calculating the rates that it charges meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services (76 FR 20220).

In the final rule, FSIS stated that it would use the formulas to calculate the annual rates, publish the rates in **Federal Register** notices prior to the start of each calendar year, and apply the rates on the first FSIS pay period at the beginning of the calendar year.

This notice provides the 2012 rates, which will be applied starting on January 1, 2012.

2012 Rates and Calculations

The following table lists the 2012 Rates, per hour, per employee, by type of service:

Service	2012 Rate (estimates rounded to reflect billable quarters)
Basetime	$ 54.24
Overtime	68.32
Holiday	82.40
Laboratory	67.36

FSIS determined the 2012 rates using the following calculations:

Basetime Rate = The quotient of dividing the Office of Field Operations (OFO) plus Office of International Affairs (OIA) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage of cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2012 basetime rate per hour per program employee is:

[FY 2011 OFO and OIA Regular Direct Pay divided by the previous fiscal year's Regular Hours ($462,961,483/16,749,338)] = $27.64 + ($27.64 * 1.9% (calendar year 2011 Cost of Living Increase)) = $28.17 + $8.63(benefits rate) + $.75 (travel and operating rate) + $16.68 (overhead rate) + $.02 (bad debt allowance rate) = $54.24.

Overtime Rate = The quotient of dividing the Office of Field Operations (OFO) plus Office of International Affairs (OIA) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 1.5, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2012 overtime rate per hour per program employee is:

[FY 2011 OFO and OIA Regular Direct Pay divided by previous fiscal year's Regular Hours ($462,961,483/16,749,338)]= $27.64 + ($27.64 * 1.9% (calendar year 2011 Cost of Living Increase)) =$28.17 * 1.5 = $42.25 + $8.63(benefits rate) + $.75 (travel and operating rate) + $16.68 (overhead rate) + $.02 (bad debt allowance rate) = $68.32.

Holiday Rate = The quotient of dividing the Office of Field Operations (OFO) plus Office of International Affairs (OIA) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 2, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2012 holiday rate per hour per program employee calculation is:

[FY 2010 OFO and OIA Regular Direct Pay divided by Regular Hours ($462,961,483/16,749,338)] = $27.64 + ($27.64 * 1.9% (calendar year 2011 Cost of Living Increase)) = $28.17 * 2 = $56.33 + $8.63(benefits rate) + $.75 (travel and operating rate) + $16.68 (overhead rate) + $.02 (bad debt allowance rate) = $82.41 (rounded to $82.40).

Laboratory Services Rate = The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by the OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2012 laboratory services rate per hour per program employee is:

[FY 2011 OPHS Regular Direct Pay/OPHS Regular hours ($23,425,344/578,026)] = $40.53 + ($40.53 * 1.9%

(calendar year 2011 Cost of Living Increase)) = $41.30 + $8.63 (benefits rate) + $.75 (travel and operating rate) + $16.68 (overhead rate) + $.02 (bad debt allowance rate) = $67.37 (rounded to $67.36).

Calculations for the Benefits, Travel and Operating, Overhead, and Allowance for Bad Debt Rates

These rates are components of the basetime, overtime, holiday, and laboratory services rates formulas.

Benefits Rate: The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

The calculation for the 2012 benefits rate per hour per program employee is:

[FY 2011 Direct Benefits/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($166,026,487/19,605,254)] = $8.47 + ($8.47 * 1.9% (calendar year 2012 Cost of Living Increase) = $8.63.

Travel and Operating Rate: The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2012 travel and operating rate per hour per program employee is:

[FY 2011 Total Direct Travel and Operating Costs/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($14,478,697/19,605,254)] = $.74 + ($.74 * 1.6% (2012 Inflation) = $.75.

Overhead Rate: The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the previous fiscal year's Office of Management Program cost in the Reimbursable and Voluntary Funds plus the provision for the operating balance less any Greenbook costs (i.e., costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus that quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2012 overhead rate per hour per program employee is:

[FY 2011 Total Overhead/(Total Regular hours + Total Overtime hours + Total Holiday hours)($321,859,390/19,605,254)] = $16.42 + ($16.42 * 1.6% (2012 Inflation) = $16.68.

Allowance for Bad Debt Rate = Previous fiscal year's total allowance for bad debt (for example, debt owed that is not paid in full by plants and establishments that declare bankruptcy) divided by previous fiscal year's total hours (regular, overtime, and holiday) worked.

The 2012 calculation for bad debt rate per hour per program employee is:

[FY 2011 Total Bad Debt/(Total Regular hours + Total Overtime hours + Total Holiday hours) = ($330,639/19,605,254)] = $.02.

Additional Public Notification

FSIS will announce this document online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: December 19, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–32875 Filed 12–22–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0027]

Notice of Request for a Revision and Extension of a Currently Approved Information Collection (Voluntary Recalls of Meat and Poultry Products)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request a revision of an approved information collection regarding voluntary recalls from commerce of meat and poultry products. FSIS is revising the information collection to increase the estimate of the total burden hours. The Agency also is requesting an extension of the OMB approval for this information collection, which will expire on July 31, 2012.

DATES: Comments on this notice must be received on or before February 21, 2012.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Room 8–163A, Mailstop 3782, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2011–0027. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John O'Connell, Paperwork Reduction Act

Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065 South Building, Washington, DC 20250–3700; (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Recalls of Meat and Poultry Products.

OMB Control Number: 0583–0135.

Expiration Date: 07/31/2012.

Type of Request: Revision of an approved information collection.

Abstract: FSIS, by delegation (7 CFR 2.18, 2.53), exercises the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting a revision of an approved information collection addressing paperwork requirements regarding the Agency's voluntary recalls from commerce of meat and poultry products to increase the estimate of the total burden hours because the number of recalls has increased. The Agency also is requesting an extension of the approval for this information collection because it will expire July 31, 2012. Although FSIS is responsible for the inspection of egg products under the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*), the Food and Drug Administration handles the recalls of egg products under a Memorandum of Understanding with FSIS.

A firm that has produced or imported meat or poultry product that is adulterated or misbranded and is being distributed in commerce may voluntarily recall the product in question. When there is a recall, FSIS asks that the recalling firm (e.g., a manufacturer, distributor, or importer of record) provide the Agency with some basic information, including the identity of the recalled product, the reason for the recall, and information about the distributors and retail consignees to whom the product was actually shipped. Under the FMIA, firms are required to keep such records that fully and correctly disclose all transactions in their business (21 U.S.C. 642). Under the PPIA, firms are required to keep such records as are properly necessary for the effective enforcement of the PPIA (21 U.S.C. 460(b)).

When a firm voluntarily recalls a product, FSIS conducts recall effectiveness checks. In conducting recall effectiveness checks, if the recall is to the retail or consumer level, the Agency contacts the distributors and actual retail consignees to ensure that they were notified of the recall, to verify the amount of product they received, and to confirm that they are removing the product from commerce and returning it to the recalling firm or otherwise disposing of the product.

FSIS has made the following estimates based upon an information collection assessment.

Estimate of Burden: FSIS estimates that it will take respondents an average of approximately 1.1 hours to collect and make this information available to FSIS.

Respondents: Official establishments, importers of record, and retail consignees.

Estimated Number of Respondents: 6,087.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,740 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Ave. SW., Room 6065 South Building, Washington, DC 20250–3700; (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on December 19, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–32871 Filed 12–22–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Foreign Agricultural Service (FAS) intends to request a renewal and revision of a currently approved information collection process used in support of Exporter Assistance programs. The renewal and revision are based on estimates of the public burden set forth in the abstract.

DATES: Comments on this notice must be received by February 21, 2012 to be assured of consideration.

Requests for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments and questions regarding the Export Assistance Programs registration forms, surveys, and qualification criteria should be sent to: Maria Nemeth-Ek, Deputy Director, Trade Services Staff, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 1020, Washington, DC 20250–1020. All written comments received will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m.

FOR FURTHER INFORMAITON CONTACT: Maria Nemeth-Ek at the address stated above or telephone (202) 720–9516, or by email at: *Maria Nemeth-EK@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Export Services.

OMB Number: 0551–0031.

Expiration Date of Approval: March 31, 2012.

Type of Request: Renewal and revision of a currently approved information collection process.

Abstract: FAS is renewing and revising the information collected under its Export Services programs. FAS is revising five of the nine forms in this information collection submission. The first revised form is the Foreign Buyers' List order form used by U.S. companies to request information on foreign buyers of food and agricultural products by country. FAS is revising this form to reflect the new organizational structure in USDA/FAS and to simplify the format of the request. The Foreign Buyers List provides information on over 20,000 buyers in more than 25 countries who specialize in the importation and distribution of U.S. products in their country. Specific program and form information is available at: *http://www.fas.usda.gov/agx/buying_us/foreign_buyers_exporters.asp.*

FAS is also revising the customer service survey form used to collect information from participants of USDA/FAS endorsed trade shows. FAS will revise this form to effectively capture information in a more concise manner and update contact information for the offices responsible for managing the trade show program. Each year a certain number of trade shows in the best prospective markets are selected to be endorsed by USDA/FAS and host a U.S.A. pavilion for U.S. companies to promote their products to buyers. A list of USDA endorsed shows is available at: *http://www.fas.usda.gov/agx/trade_events/trade_events.asp.* Customer service surveys are collected by FAS to improve the effectiveness of USDA/FAS services. This information is necessary to manage, plan, and evaluate the effectiveness of these services, which are intended to help U.S. companies market and sell their products overseas.

The remaining three forms in this collection to be renewed (the U.S. Supplier Registration form, the Madigan Export Award form, and the Exporter Directory Registration form) will be revised only to reflect the new organizational structure of USDA/FAS and update the contact information of the offices responsible for managing these programs.

Four forms in this submission are no longer used and will not be renewed. These forms are the Foreign Buyer Registration form, the Exporter Directory Evaluation form, the Registration/Application Form for the American Café, and the Sample Registration Form for Trade Events/American Café.

Due to the discontinuation of four forms in this information collection package and the minor structural and material adjustments that will be requested for the other five forms in this collection, the annual burden in hours for this collection is reduced by more than fifty percent from the previous submission for renewal in 2008.

Estimate of Burden: The burden to U.S. exporters is estimated to average 0.25 hours per response.

Respondents: U.S. agricultural exporters of food, farm, and forest products.

Estimated Number of Respondents: 1,500 per annum.

Estimated Number of Responses per Respondent: 4 per annum.

Estimated Total Annual Burden of Respondents: 1,500 hours per annum.

Copies of this information collection can be obtained from Tamoria Thompson-Hall, the Agency Information Collection Coordinator, at (202) 690–1690.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Persons with disabilities who require an alternative means to communicate information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Dated: December 12, 2011.

Suzanne E. Heinen,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2011–32924 Filed 12–22–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Grazing Permit Administration Forms

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no revision of a currently approved information collection, Grazing Permit Administration Forms.

DATES: Comments must be received in writing on or before February 21, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Attn: Director, Rangeland Management, Mail Stop 1103, 1400 Independence Ave., SW., Washington, DC 20250–1153.

Comments also may be submitted via facsimile to (202) 205–1096 or by email to: *ajoseph@fs.fed.us.*

The public may inspect comments received at USDA, Forest Service, Rangeland Management staff, Room 3SO, 201 14th St., SW., Washington, DC, 20050, during normal business hours. Visitors are encouraged to call ahead to (202) 205–1460 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Annette Joseph, Rangeland Management at (202) 205–1454. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339, between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: *Title:* Grazing Permit Administration Forms.

OMB Number: 0596–0003.

Expiration Date of Approval: July 31, 2012.

Type of Request: Extension without Revision.

Abstract:

This information collection is necessary to allow proper administration of livestock grazing programs on National Forest System (NFS) lands. Domestic livestock grazing occurs on approximately 90 million acres of NFS lands. Grazing on NFS lands is subject to authorization and administrative oversight by the Forest Service. The information collected by the Forest Service is the minimum required for issuance and administration of grazing permits, including fee collections, as authorized by the Federal Land Policy and Management Act (FLPMA) of 1976, as amended (43 U.S.C. 1700 et seq.) and United States Department of Agriculture regulations at 36 CFR part 222, subparts A and C. Similar information is not available from any other source.

Forest Service officials use the following forms to collect the information necessary to administer this program. These forms are:

FS–2200–1, Refund, Credit or Transfer Application, collects the following information:

- Name and mailing address
- Permit number
- National Forest or Grassland and Ranger District
- Purpose of application: Credit on next year's fees, refund of fees, or transfer of credit to another account
- Information on the allotment; number of cattle, horses, or sheep;
- Period range not used
- Reason for less use than permitted
- Signature of Permittee

Information collected on this form enables the Forest Service to evaluate a grazing permittee's request for refund, credit, or transfer of the unused portion of the preceding season's grazing fees paid to the Forest Service for the occupancy of the National Forest System lands by permitted livestock.

FS–2200–2, Application for Temporary Grazing or Livestock Use Permit, collects the following information:

- Name and address of applicant
- Type, amount, and location of requested grazing
- Period of use
- Grazing allotment

Information collected on this form enables the Forest Service to determine whether individuals qualify for a temporary grazing or livestock use permit, which authorizes grazing on certain NFS lands for a period not to exceed 1 year. The Forest Service uses the information on this form to determine whether the applicant is likely to comply with grazing permit terms and conditions.

FS–2200–12, Waiver of Term Grazing Permit, enables the Forest Service to terminate an individual's grazing privileges on certain NFS lands based upon that individual's sale or transfer of base property, permitted livestock, or both to another individual who desires to acquire a new grazing permit. The waiver enables the Forest Service to cancel the grazing permit held by the individual who sold or transferred the base property, permitted livestock, or both; and to identify the individual who acquired the base property, permitted livestock, or both as the preferred applicant for a new grazing permit.

FS–2200–13, Escrow Waiver of Term Grazing Permit Privileges, collects information on loans made to permittees. The Forest Service uses the information to record the name and address of a permittee's lender, the amount of the loan, and the due date for repayment. The information assists the Agency officials in determining whether to hold in escrow, on behalf of the lender, all of the privileges associated with the grazing permit except the privilege to graze. The Forest Service uses the collected information to (1) Notify the lender of important issues associated with the administration of the grazing permit and (2) facilitate the transfer of a grazing permit to a lender if the permittee defaults on a loan.

FS–2200–16, Application for Term Grazing Permit, collects the following information:

- Name and address of applicant
- Type, amount, and location of requested grazing
- Period of use
- Grazing allotment

The information collected on this form enables the Forest Service to evaluate an applicant's eligibility and qualification to hold a term grazing permit authorizing the use of National Forest System lands for livestock grazing purposes, to determine the applicant's ability to comply with grazing permit terms and conditions, and to notify the applicant in writing of matters associated with the administration of permitted grazing including, but not limited to, bills for the fees associated with the permitted grazing.

FS–2200–17, Application for Term Private Land Grazing Permit, collects the following:

- Name and address of applicant
- Type, amount, and location of requested grazing
- Period of use
- Grazing allotment

The information collected on this form enables the Forest Service to evaluate an applicant's eligibility and qualification to hold a term private land-grazing permit, which authorizes the use of National Forest System lands and private lands controlled by the applicant for livestock grazing purposes. The information also enables the Forest Service to determine the applicant's ability to comply with grazing permit terms and conditions, and to notify the applicant in writing of matters associated with the administration of permitted grazing.

FS–2200–25, Ownership Statement by Corporation or Partnership, collects the following:

- Name of corporation or partnership
- The title, signing authority, mailing address, shares owned or ownership of each stockholder or partner

The information on this form enables the Forest Service to evaluate whether a corporation or partnership is eligible and qualified to hold a term grazing permit authorizing grazing on certain National Forest System lands, whether the corporation is authorized to conduct business in the state in which the National Forest System lands to be grazed are located, and which shareholders or partners are authorized to sign official documents on behalf of the corporation or partnership.

Estimate of Annual Burden: 25 minutes.

Type of Respondents: Individuals, Businesses, and Farms.

Estimated Annual Number of Respondents: 3900.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1950 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: December 8, 2011.

Faye L. Krueger,

Associate Deputy Chief, NFS.

[FR Doc. 2011–32965 Filed 12–22–11; 8:45 a.m.]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 81–2011]

Foreign-Trade Zone 99—Wilmington, DE; Application for Reorganization and Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the State of Delaware (grantee of FTZ 99), through the Delaware Economic Development Office, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 19, 2011.

FTZ 99 was approved by the Board on April 27, 1984 (Board Order 248, 49 FR 19368, 05/07/84). The current zone project includes the following site: *Site 1* (309 acres)—Port of Wilmington, 1 Hausel Road, Wilmington.

The grantee's proposed service area under the ASF would be New Castle, Kent and Sussex Counties 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 Wilmington Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize and expand its existing zone project to include Site 1 as a ''magnet'' site. In addition, the applicant is requesting approval of the following new ''usage-driven'' site: Proposed Site 2 (142 acres), Fisker Automotive, Inc., 801 Boxwood Road, Wilmington (New Castle County).

The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 99's authorized subzones.

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

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 21, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 7, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: December 19, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–32936 Filed 12–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 82–2011]

Foreign-Trade Subzone 41H Application for Expansion; Mercury Marine (Marine Propulsion Products), Fond du Lac and Oshkosh, WI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Milwaukee, grantee of FTZ 41, on behalf of Mercury Marine, operator of Subzone 41H at Mercury Marine's marine propulsion products manufacturing facilities in Fond du Lac and Oshkosh, Wisconsin, requesting authority to expand the scope of FTZ manufacturing authority to include additional finished products and foreign-origin components. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the Board's regulations (15 CFR part 400). It was formally filed on December 19, 2011.

Subzone 41H was approved by the Board in 1999 with authority granted for the manufacturing of marine propulsion products at Mercury Marine's facilities located in Fond du Lac and Oshkosh, Wisconsin (Board Order 1065, 64 FR 63787, 11–22–1999). The subzone is comprised of the following sites: *Site 1* (12 acres)—Plant 95, 325 Larsen Drive, Fond du Lac; *Site 2* (9 acres)—Plants 4 and 98, 660 South Hickory Street, Fond du Lac; *Sites 3 and 4* (29 acres)—Plant 4, 660 South Hickory Street, Fond du Lac, *Site 5* (21 acres)—Plant 17, W6207 Pioneer Road, Fond du Lac; *Site 6* (11 acres)—Plant 17A, 771 South Military Road, Fond du Lac; *Site 7* (79 acres)—Plants 3, 10, 12, 15, and 52, W6250 Pioneer Road, Fond du Lac; *Site 8* (1 acre)—adjacent to Site 3 at Pioneer Road; *Site 9* (2 acres)—Water Street Plant, Water Street; Fond du Lac; *Site 10* (13 acres)—Plant 36, N7480 County Road UU, Fond du Lac; and, *Site 11* (10 acres)—Plants 33 and 64, 445–505 Marion Road in Oshkosh, Wisconsin.

The facilities (2,479 employees) are used to produce marine inboard, outboard and jet pump engines for the U.S. market and export. Components and materials sourced from abroad include: oil, alcohols, adhesives, plastic casings, adhesive sheets/plates, ethylene bags, packaging materials, rubber profiles/tubes/hoses/gaskets, belts, valves, ball/roller bearings, oil seals, antifreeze, articles of wood, paper books and labels, decals, PVC, fiberglass, iron or non alloy tubes/pipes/profiles/fittings, chain, fasteners, springs, wire/cable, base metal mountings, internal parts of marine engines, gears, ignition systems, electrical components, compasses, gauges, measuring and controlling instruments, starters, flywheels, pulleys, shafts, electric motors, propellers, electromagnetic couplings, electronic components, pumps, and filters (duty rates: free—9.8%).

The applicant is now requesting authority to expand the scope of authority to include marine stern drives and transom assemblies as additional finished products to be manufactured under FTZ procedures. The applicant also requests that the scope of FTZ manufacturing authority be expanded to include additional foreign-sourced components to be used in FTZ production activity. New components to be sourced from abroad (representing 41% of the value of the finished products) include: transom fittings, fittings, linear (fluid power) cylinders, covers, propeller hub assemblies, and electrodes (anodes) (duty rate range: free—6.2%). Expanded FTZ procedures could continue to exempt Mercury Marine from customs duty payments on the additional foreign-origin components used in production for export. On its domestic shipments, the company would be able to elect the duty rates during customs entry procedures that apply to finished stern drives and transom assemblies (free—3.9%) for the foreign inputs noted above. Customs duties also could possibly be deferred or reduced on foreign status production equipment. Mercury Marine would also be exempt from duty payments on foreign inputs that become scrap during the production process.

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

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002. The closing period for receipt of comments is February 21, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 7, 2012.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above and in the ''Reading Room'' section of the Board's Web site, which is accessible via w*ww.trade.gov/ftz.* For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: December 19, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–32991 Filed 12–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 80–2011]

Foreign-Trade Zone 7—Mayaguez, PR, Expansion of Manufacturing Authority; Amgen Manufacturing Limited (Biotechnology and Healthcare Products), Juncos, PR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Company, grantee of FTZ 7, requesting an expansion of the scope of manufacturing authority approved within Subzone 7M, on behalf of Amgen Manufacturing Limited (Amgen) in Juncos, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 15, 2011.

Subzone 7M (2,838 employees, 75 million vial and 38 million syringe capacity) was approved by the Board in 2008 for the manufacture of epogen® (epoetin alfa), neupogen® (filgrastim), aransep® (darbepoetin alfa), enbrel® (etanercept), kineret® (anakinra), and neulasta® (pegfilgrastim) (Board Order 1597, 73 FR 78290–78291, 12–22–2008). The subzone facility (221 acres) is located at Road PR 31 Km. 24.6, in Juncos, Puerto Rico.

The current request involves an expansion of the capacity of the facility to 98 million vials and 50 million syringes as well as the addition of the following new products: Sensipar® (cinacalcet), enbrel® (enanercept) with auto injector and denosumab. New components and materials sourced from abroad (representing 1% of the value of the finished product) include: sucrose formulation, sodium citrate, sensipar bulk API, L-glutamine USP, antisera and blood fractions modified immunological products, resin, sunbright polyether, phenyl sepharose, acrylic polymers, auto injector devices, stoppers, plunger rods, partitions, dispenser packs, packing material, vials, filters and syringes (duty rate ranges from duty-free to 35.74¢/kg). The application also requests authority to include a broad range of inputs and finished biotechnology and healthcare products that Amgen may produce under FTZ procedures in the future. New major activity involving these inputs/products would require review by the FTZ Board. The scope otherwise would remain unchanged.

FTZ procedures could exempt Amgen from customs duty payments on the additional capacity and foreign components used in export production. The company anticipates that some 48 percent of the plant's shipments will be exported. On its domestic sales, Amgen would be able to choose the duty rates during customs entry procedures that apply to sensipar® (cinacalcet), enbrel® (enanercept) with auto injector and denosumab (duty-free) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures help improve the plant's international competitiveness.

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

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 21, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 7, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site,

which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: December 15, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–32937 Filed 12–22–11; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 79–2011]

Proposed Foreign-Trade Zone; Miami, Florida Area Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Miami-Dade County to establish a general-purpose foreign-trade zone at sites in Miami, Florida, within the Miami Customs and Border Protection (CBP) port of entry, under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 16, 2011. The applicant is authorized to make the proposal under Florida Statutes, title XIX, chapter 288, part III.

The proposed zone would be the fourth general-purpose zone for the Miami CBP port of entry. The existing zones are as follows: FTZ 32, Miami, Florida (Grantee: Greater Miami Foreign Trade Zone Inc., Board Order 123, 09/06/77); FTZ 166, Homestead, Florida (Grantee: Vision Foreign Trade Zone Inc., Board Order 482, 08/17/90); and, FTZ 180, Miami (Wynwood), Florida (Grantee: Wynwood Community Economic Development Corporation, Board Order 543, 11/18/91).

The applicant's proposed service area under the ASF would be the northern half of Miami-Dade County, Florida, delineated by SW 8th Street (SR–90/US 41) as the southern boundary. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within the Miami Customs and Border Protection port of entry.

The proposed zone would include three ''magnet'' sites in Miami-Dade County: Proposed Site 1 (520 acres)—Dante B. Fascell Port of Miami, 1015 North America Way, Miami; Proposed Site 2 (423 acres)—Flagler Logistics Hub, 6875 NW 58th Street, Miami; and, Proposed Site 3 (419 acres)—Flagler Station, 10505 NW 112th Avenue, Miami. Site 1 is owned by Miami-Dade County, and Sites 2 and 3 are privately owned. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted.

The application indicates a need for zone services in Miami-Dade County, Florida. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

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

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 21, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 7, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: December 16, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–32938 Filed 12–22–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–840]

Seamless Refined Copper Pipe and Tube From Mexico: Extension of Time Limits for the Preliminary Results of Antidumping Duty New Shipper Review

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

DATES: *Effective Date:* December 23, 2011.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Joy Zhang, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave NW., Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2011, the Department of Commerce (the Department) published a notice of initiation of the new shipper review of the antidumping duty order on seamless refined copper pipe and tube from Mexico, covering the period November 22, 2010, to April 30, 2011. *See Seamless Refined Copper Pipe and Tube From Mexico: Notice of Initiation of Antidumping Duty New Shipper Review,* 76 FR 39850 (July 7, 2011). The preliminary results are currently due no later than December 25, 2011.[1]

Extension of Time Limit for Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires that the Department make a preliminary determination within 180 days after the date of which the review is initiated. Section 751(a)(2)(B)(iv) of the Act further states that if the administering authority concludes that the case is extraordinarily complicated,

[1] Because the statutory deadline (*i.e.,* December 25, 2011) falls on a weekend and Monday December 26, 2011, is a Federal Holiday, the preliminary results are due December 27, 2011, which is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

it may extend the 180-day period to issue its preliminary results to up to 300 days.

We determine that this review is extraordinarily complicated because of the allegations filed by petitioners [2] concerning the corporate structure of respondent GD Affiliates S.de R.L. de C.V. and the petitioner's request that the review be rescinded. Given the complexity of these issues, and in accordance with section 751(a)(2)(B)(iv) of the Act, we are extending the time period for issuing the preliminary results of this review by 120 days. Therefore, the preliminary results are now due no later than April 23, 2012. The final results continue to be due 90 days after publication of the preliminary results.

This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: *December 19, 2011.*

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–32993 Filed 12–22–11; 8:45 am]

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[2] The petitioners in this investigation are Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, ''petitioners'').

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Medical Trade Mission to India; Mumbai, New Delhi and Hyderabad March 2–8, 2012

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing a Trade Mission to India from March 2–8, 2012. This will be a non-executive led mission.

The Medical Trade Mission to India is intended to include representatives from a variety of U.S. medical/healthcare industry manufacturers (equipment/devices, laboratory equipments, emergency equipment, diagnostic, physiotherapy and orthopedic, healthcare information technology, and other allied sectors), service providers, and associations and trade organizations. The mission will introduce the participants to the government bodies, end-users and prospective partners whose needs and capabilities are best suited to each U.S. participant's strengths. Participating in an official U.S. industry delegation, rather than traveling to India on their own, will enhance the participants' ability to secure meetings in India. The delegates will meet with government officials to obtain first-hand information about the regulations, policies and procedures in the healthcare industry. It will be an opportunity for participants to visit healthcare facilities to get acquainted with the functioning of hospitals in India and the varied standards. Market forces, such as medical tourism, insurance and corporate sector have accelerated the demand for quality in healthcare services. As a result, there is a growing demand from consumers for better healthcare as the lack of quality assurance mechanisms limits their access to appropriate health services. The Healthcare industry is now proactively creating standards for the medical tourism industry with the help of credit rating agencies, insurance companies and others involved in the self regulation of the sector. The National Accreditation Board for Hospitals (NABH) has been set-up to establish and operate accreditation programs for healthcare organizations. Some private hospitals are also applying for accreditation from bodies such as the Joint Commission International (JCI). The mission will include appointments and briefings in Mumbai, New Delhi and Hyderabad, India's major healthcare industry hubs. Trade mission participants will have the opportunity to interact extensively with Embassy/Consulate Officials and Commercial Service (CS) India healthcare specialists, to discuss industry developments, opportunities, and sales strategies.

There is an option in the mission to participate in Medical Fair India. The Medical Fair India is the 18th International Exhibition and Conference on Diagnostic, Medical Technology, Rehabilitation, Medical Equipment and Components. MEDICAL FAIR INDIA offers a new platform for technology and service solutions for use in the medical engineering industry—from new materials, components, intermediate products, packaging and services all the way over to more complex micro system technology and nanotechnology. For more information on Medical Fair India, please visit *http://www.medicalfair-india.com/*. For the last three years the U.S. Department of Commerce has certified the Medical Fair India.

Commercial Setting

The Indian healthcare industry is experiencing a rapid transformation and emerging to be a promising market for U.S. suppliers of high end products seeking partnership opportunities. The Indian healthcare industry is estimated at $50 billion industry in India and is expected to reach over $75 billion by 2012. There is a growing demand for quality healthcare service. The Indian population of 1 billion people is growing at a rate of 1.6 percent per year. The growth in affluence in India, which now has over 400 million middle-income consumers, is creating demand for a higher standard of healthcare. The type of healthcare serviced required have changed due to the change in the demographic profile of India and the rise of lifestyle-related diseases such as diabetes, cardiovascular diseases, and diseases of the central nervous system. The number of individuals covered by health plans is estimated at 20 million presently, leaving a large portion of the Indian population uninsured. The potential market for healthcare services, including healthcare information and management systems, is expected to grow at a faster pace as hospitals strive to improve operational efficiencies in managing patient records and other key systems.

Currently, the medical infrastructure in India is far from adequate with demand for hospitals and beds far surpassing availability. The problem is most acute in rural India, which accounts for over half of India's population; about 80 percent of available hospital beds are located in the urban centers, leaving only 20 percent for the larger rural population. Both the Indian government and the private sector are striving to bring about rapid growth in the industry to manage the increased demand for high quality service. Construction of several new hospitals as well as upgrades of existing hospitals is planned. Healthcare is provided through primary care facilities, secondary and tertiary care hospitals. While the first two categories are fully managed by the government, tertiary care hospitals are owned and managed either by government or private sector.

The growth in medical infrastructure is accompanied by increased demand for medical equipment/devices. The medical equipment segment is growing at an impressive rate of 15 percent. The demand for the medical equipment is expected to reach $5 billion by 2012, reflecting significant growth from the current figure of $2.7 billion. The new specialty and super-specialty hospital facilities depend on the import of high-

end medical equipment, which accounts for over 65 percent of the entire healthcare market. The demand is primarily for high-tech devices. Most Indian healthcare institutes use foreign medical equipment for the purpose of diagnosis, treatment and surgery. The government has identified healthcare as a priority sector and has taken the following measures to promote this industry:

- 100 percent foreign direct investment (FDI) is permitted for health and medical services under the automatic route. (FDI in sectors/activities to the extent permitted under automatic route does not require any prior approval either by the Government or Reserve Bank of India (RBI). The investors are only required to notify the Regional Office concerned of RBI within 30 days of receipt of inward remittances and file the required documents with that office within 30 days of issue of shares of foreign investors.
- The National Rural Health Mission (NRHM) has allocated US$ 10.15 billion for the up- grading and capacity enhancement of healthcare facilities
- Moreover, in order to meet the revised cost of construction, in March 2010 the Government of India (GOI) allocated an additional US$ 1.2 billion for the construction of six All India Institute of Medical Sciences (AIIMS)-like institutes and up-grade of 13 existing Government Medical Colleges.

Medical tourism is one of the major external drivers of growth of the Indian healthcare sector. The cost of major surgeries in India remains relatively low. Government and private sector estimates the value of this segment of the industry will reach $1.5 billion by 2012. The healthcare industry is now proactively creating standards for the medical tourism industry with the help of credit rating agencies, insurance companies and others involved in the self regulation of the sector. The National Accreditation Board for Hospitals (NABH) has been set-up to establish and operate accreditation programs for healthcare organizations. Some private hospitals are also applying for accreditation from bodies such as the Joint Commission International (JCI).

The growth in this industry makes it very attractive for U.S. companies, both large companies already doing business in the market but also and especially small- and medium- sized enterprises (SMEs), and new-to-market (NTM) companies.

Mission Goals

The goal of the Medical Trade Mission to India is to (1) familiarize the participants with the current healthcare situation as well as the developments taking place in India (2) introduce participants to government officials in India to learn about various regulatory procedures and policies in the healthcare sector (3) introduce participants to Indian companies for potential partnerships.

Mission Scenario

The first stop on the mission itinerary is Mumbai, the financial capital of India, located in western India. New Delhi and Hyderabad are the second and third stops of the mission and are located in northern and western India. Several corporate hospital chains have their headquarters in these cities. These include Max group and Medicity Medanta in New Delhi, the Apollo group in Hyderabad, Fortis and the Tata Research in Mumbai.

In all three cities the delegates will attend Embassy and industry briefings, networking events and take part in business matchmaking appointments with private-sector organizations. As New Delhi is the capital city and home to Central (Federal) Government, the participants will have an opportunity in New Delhi to meet the representatives of the Ministry of Health, Drugs Controller Generals Office, and Department of Pharmaceutical. The U.S. mission members will learn about policies, procedures and opportunities in the country's healthcare industry.

These three cities are each regional hubs for the medical/healthcare industry. The end-users of the healthcare industry often prefer to be serviced by regional distributors/agents rather than country-wide distributors. Thus, medical equipment importers/distributors are based in these cities to supply and service the regions surrounding each of the cities. The three cities will serve as good locations for business one-on-one matchmaking meetings and networking.

U.S. participants will be counseled before and after the mission by U.S. Export Assistance Center trade specialists, primarily by members of the Global Healthcare Team. Participation in the mission will include the following:

- Pre-travel briefings/webinar on subjects ranging from business practices in India to security;
- Embassy/Consulate briefings on the business climate, political scenario, medical/healthcare industry scenario;
- Industry briefings ''Doing business in India—focus sector medical/healthcare'';
- Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts in Mumbai, New Delhi and Hyderabad;
- Meetings with Indian Government officials in New Delhi;
- Tour of hospitals and interaction with senior hospital staff and procurement head (all the three stops); and
- Networking receptions in three cities of the trade mission.

Proposed Timetable

Mission participants will be encouraged to arrive Thursday, March 1, 2012 to allow time to adjust to their new surroundings before the mission program begins on Friday, March 2.

Friday, March 2
- Mumbai
- Morning: Consulate & Industry briefing by U.S. Department of Commerce at the hotel
- Noon/Afternoon:
- Option I—Trade Mission
- One-on-One business matchmaking appointments at the hotel
- Lunch—private lunch
- Option II—participate/exhibit in Medical Fair 2012 by Messe Dusseldorf
- Evening: Networking reception at the hotel

Saturday, March 3
- Mumbai/New Delhi
- Option I—
- Morning: One-on-One business matchmaking appointments at the hotel
- Late afternoon: Check-out of the hotel & depart for Mumbai airport
- Travel to New Delhi
- Evening: Arrive New Delhi
- Option II—participate/exhibit in Medical Fair 2012 by Messe Dusseldorf. Delegates in Option 2 depart for New Delhi on Sunday, March 4, 2011

Sunday, March 4
- New Delhi
- Free day for the delegates in Option 1/Travel Day for the Delegates in Option II

Monday, March 5
- New Delhi
- Morning: Breakfast briefing by the U.S. Commercial Service at hotel
- Meetings with the Government of India Ministries
- Lunch: Private lunch
- Afternoon: One-on-one matchmaking meeting at the hotel
- Evening: Networking reception

Tuesday, March 6
- New Delhi/Hyderabad
- Morning: One-on-one matchmaking meeting at the hotel
- Lunch on own
- Late afternoon: Check-out of the hotel & depart for New Delhi airport

Travel to Hyderabad
Evening: Arrive Hyderabad
Wednesday, March 7
Hyderabad
Morning: One-on-One business matchmaking appointments at the hotel
Private lunch
Afternoon: One-on-One business matchmaking appointments at the hotel
Evening: Networking reception
Thursday, March 8
Hyderabad
Hospital chain visit and meeting with senior management
Lunch on own
Evening: Check-out of the hotel
Depart for Hyderabad International airport for onward travel

Participation Requirements

All parties interested in participating in the India Medical Trade Mission must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 and a maximum of 20 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in India as well as U.S. companies seeking to enter the Indian market for the first may apply.

Fees and Expenses

After a company or organization has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required.

Option 1: The participation fee for the three city (Mumbai, New Delhi and Hyderabad) Trade Mission will be $4,537.00 for a small or medium-sized enterprise (SME),* or trade organization, and $5,225.00 for large firms. The fee for each additional firm representative (large firm or SME/trade organization) is $500.

Option 2: Fee, for participants joining the Trade Mission in two-cities (Delhi and Hyderabad) will be $3,275.00 for SMEs or trade organizations, and $3,950.00 for large companies. The fee for each additional firm representative (large firm or SME/trade organization) is $500. Selecting option II * in Mumbai i.e. exhibiting in Medical Fair India * will be approximately $3,547.00 for 9 sq.m. shell scheme space + $578.00 as registration fees (this will be billed in Euros)

(* Fee for participating in the Medical Fair 2012 is separate and will have to be paid directly to the organizers Messe Dusseldorf.)

Expenses for lodging, some meals, incidentals, and travel (except for transportation to and from meetings) will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, (or in the case of a trade association or trade organization, information on the products and/or services of the companies to be represented on the trade mission), primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content. In the case of a trade association or trade organization, the applicant must certify that, for each company to be represented by the trade association or trade organization, the products and services the represented company seeks to export are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of a company's (or, the case of a trade association or trade organization, representing companies') products or services to the mission's goals.
- Company's (or, in the case of a trade association or trade organization, represented companies') potential for business in India, including likelihood of exports resulting from the trade mission.
- Consistency of the applicant's goals and objectives with the stated scope of the trade mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register** (*http://www.gpoaccess.gov/fr*), posting on ITA's trade mission calendar—*http://www.trade.gov/trade-missions*—and other Internet web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than December 22, 2011. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis. We will inform all applicants of selection decisions as soon as possible after the applications are reviewed. Applications received after the December 22 deadline will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service Healthcare Team:
Ms. September Secrist, International Trade Specialist, U.S. Commercial Service, U.S. Department of Commerce, 2001 6th Avenue, Suite 2610, Seattle, WA 98121, Phone: (206) 553–5615 x229, Fax: (206) 553–7253;
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Ms. Ruma Chatterjee, U.S. Commercial Service Mumbai, Ph: 91–22–2265 2511, Fax: 91–22–22652850, *Ruma.Chatterjee@trade.gov;*
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Elnora Moye,
Trade Program Assistant.

[FR Doc. 2011–32966 Filed 12–22–11; 8:45 am]
BILLING CODE 3510–FP–P

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/size-standards)* Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see *http://www.export.gov/newsletter/march2008/initiatives.html*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

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

SUMMARY: On August 4, 2011, the Department of Commerce (the ''Department'') published the *Preliminary Results* for the new shipper review (''NSR'') of uncovered innerspring units (''innersprings'') from the People's Republic of China (''PRC'') covering the period of review (''POR'') February 1, 2010, through July 31, 2010.[1] As discussed below, we preliminarily found that Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory's (''Quan Li'') sale was non-*bona fide,* and announced our preliminary intent to rescind Quan Li's NSR. For the final results of this review, we continue to find Quan Li's sale to be non-*bona fide.* Therefore, because there were no other shipments or entries by Quan Li during the POR, we are rescinding this NSR.

DATES: *Effective Date:* December 23, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office IX, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone–(202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

As noted above, on August 4, 2011, the Department published the *Preliminary Results* of this NSR. Between September 13, 2011 and September 30, 2011, we received case and rebuttal briefs from Leggett and Platt, Incorporated (the ''Petitioner'') and Quan Li. Thereafter, the Department extended the time period for issuing the final results to December 23, 2011.[2]

Analysis of Comments Received

All issues raised in the briefs by parties are addressed in the ''Uncovered Innerspring Units from the People's Republic of China: Issues and Decision Memorandum for the Final Results of New Shipper Review,'' which is dated concurrently with this notice (''I&D Memo''). A list of the issues which parties raised, and to which we respond in the I&D Memo, is attached to this notice as an Appendix. The I&D Memo is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 7046, and is accessible on the Department's Web site at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

Scope of the Order

The merchandise subject to the order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010, 9404.29.9005 and 9404.29.9011 and have also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Bona Fides Analysis

In conducting an NSR, the Department examines price, quantity, and other circumstances associated with the sale to determine if the sale was based on normal commercial considerations and presents an accurate representation of the company's normal business practices, and provides a future indicator of its future selling practice.[3] If the Department determines, for example, that the price was not based on normal commercial considerations or is atypical of the respondent's normal business practices, including other sales of comparable merchandise, the sale may be considered not *bona fide,* and, as such, cannot serve as a reasonable or reliable basis for calculating a dumping margin.

For the *Preliminary Results,* the Department analyzed the *bona fides* of Quan Li's sale and preliminarily found its sale to the United States to be non-*bona fide.*[4] Based on the Department's complete analysis of all the information on the record of this review regarding the *bona fides* of Quan Li's NSR sale, the Department continues to find Quan Li's sale to be non-*bona fide* because (1) Quan Li's sale quantity is low and not typical of other normal innersprings transactions, (2) Quan Li's sale price is high and therefore atypical and not indicative of future sales, (3) the record does not demonstrate that the subject merchandise was consumed or resold, and (4) the record does not demonstrate that the innersprings are an ongoing concern for the importer. The Department's analysis was not based on any one factor but, instead, examined the totality of the evidence on the record of this review to determine that Quan Li's sale was not *bona fide.*

Rescission of New Shipper Review

For the foregoing reasons, the Department finds that the sale of Quan Li is non-*bona fide* and that this sale

[1] *See Uncovered Innerspring Units from the People's Republic of China: Preliminary Intent to Rescind New Shipper Review,* 76 FR 47151 (August 4, 2011) (''*Preliminary Results*'').

[2] *See Uncovered Innerspring Units from the People's Republic of China: Extension of Final Results of Antidumping Duty New Shipper Review, 76 FR 65695 (October 24, 2011); Uncovered Innerspring Units from the People's Republic of China: Second Extension of Final Results of Antidumping Duty New Shipper Review, 76 FR 73592* (November 29, 2011).

[3] *See Shandong Chenhe Int'l Trading Co.* v. *United States,* No. 08–00373, Slip Op. 10–129 at 14 (CIT 2010); *see also Tianjin Tiancheng Pharm. Co* v. *United States,* 366 F. Supp. 2d 1246, 1250 (CIT 2005); and *Hebei New Donghua Amino Acid Co.* v. *United States,* 374 F. Supp. 2d 1333, 1342 (CIT 2005).

[4] *See* Memorandum to James C. Doyle, Director, Office IX, through Scot T. Fullerton, Program Manager, Office IX, from Paul Walker, Case Analyst, Office IX, ''First New Shipper Review of Uncovered Innerspring Units from the People's Republic of China: *Bona Fide* Analysis of Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory's New Shipper Sale,'' date August 4, 2011.

does not provide a reasonable or reliable basis for calculating a dumping margin. Because a non-*bona fide* sale was the only sale of subject merchandise during the POR, the Department is rescinding this NSR pursuant to section 351.214(f) of the Department's regulations.

Notifications to Importers

The Department will notify U.S. Customs and Border Protection that bonding is no longer permitted to fulfill security requirements for shipments by Quan Li of innersprings from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**. Furthermore, because the Department has not completed this review for Quan Li and Quan Li has not otherwise been reviewed by the Department, a cash deposit at the PRC-wide rate of 234.51% [5] should be collected for all of Quan Li's shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice until further notice.

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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is the only reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This NSR and notice are issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Act and section 351.214(f)(3) of the Department's regulations.

[5] *See Uncovered Innerspring Units from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 79443 (December 29, 2008).

Dated: December 15, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–32940 Filed 12–22–11; 8:45 am]

BILLING CODE 3510–DS–P

UNITED STATES DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial India Infrastructure Business Development Mission, March 25–30, 2012

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Secretary of Commerce John Bryson will lead a senior-level business development trade mission to Mumbai, Jaipur and New Delhi, India, March 25–30, 2012. The overall focus of the trip will be commercial opportunities for U.S. companies, including joint ventures and export opportunities. In each city participants will have a market briefings followed by one-on-one appointments with potential buyers/partners and meetings with high level government officials.

Mission Description

The focus of the mission is to promote U.S. exports to India and discuss trade policy issues with respect to India's goal of investing $1 trillion in infrastructure development during the next five years. The mission will recruit companies from the following sectors: project management and engineering services (including architecture and design), transportation (including road/highways, rail, airports and intelligent transportation systems), and energy (including distribution, transmission and smart grid).

The mission supports President Obama's National Export Initiative (NEI) and his goal of doubling U.S. exports by 2015 to strengthen the U.S. economy and U.S. competitiveness through meaningful job creation. It also supports the International Trade Administration's Growth in Emerging Metropolitan Sectors (GEMS) initiative. The mission will help U.S. companies already doing business in India increase their current level of exports and deepen their business interests. The mission will also target experienced U.S. exporters who have yet to penetrate the Indian market. Participating firms will gain market information, make business and government contacts, solidify business strategies, and/or advance specific projects. In each of the above sectors, U.S. companies will meet with prescreened potential partners, agents, distributors, representatives, and licensees. The agenda will also include meetings with high-level national, regional and local government officials, networking opportunities, country briefings, and seminars.

The delegation will be composed of 20–25 U.S. firms representing the mission's target sectors. Representatives of the U.S. Trade and Development Agency (USTDA), the Export-Import Bank of the United States (Ex-Im) and the Overseas Private Investment Corporation (OPIC) will be invited to participate to provide information and counseling on their programs, as they relate to the Indian market.

Commercial Setting

India is one of the world's fastest growing economies and it presents exciting opportunities for U.S. companies that offer products and services that help it meet its rapidly expanding infrastructure needs. India is seeking to invest $1 trillion in its infrastructure during the 12th Five-Year Plan (2012–2017) and is looking for private sector participation to fund half of this massive expansion through the Public-Private Partnership (PPP) model. The rapid growth of the Indian economy (averaging 8% over the past 10 years) has created a pressing need for infrastructure development and the country needs significant outside expertise to meet its ambitious targets. U.S. industry is well qualified to supply the kinds of architectural, design and engineering services and project management skills needed to successfully tackle major projects, including such groundbreaking projects as the Delhi-Mumbai Industrial Corridor (DMIC). U.S. technologies are also well positioned to rationalize energy use and production to support new industrial zones as they are built in this chronically energy deficit country.

Industry Focus

Project Management and Engineering Services (including Architecture and Design): As Indian developers expand their capabilities and construct and connect new industrial facilities, foreign firms often play a major role in design, construction, engineering and management of these signature projects. Major upcoming opportunities for U.S. firms include the seven technology townships associated with the development of the Delhi Mumbai Industrial Corridor (DMIC).

The Indian architecture/construction industry is an integral part of the

economy and a conduit for a substantial part of its development investment. The sector is poised for additional growth due to the dual trends of industrialization and urbanization, and the rising expectations of its citizens for an improved standard of living as a result of economic development.

The profession and practice of architecture, design and project management in India has undergone a complete transformation in recent years. The booming economy and growing middle class has prompted developers to bring in foreign architects to design everything from airports to residential and commercial building and resorts. Foreign architects have a proven track record and have helped bring about a transformation in the way projects are designed and built. They have paired up with Indian firms who have the expertise on the ground to execute projects.

Transportation (Road/Highway, Railways and Airports) Road/Highways: With a total of 3.14 million kilometers of roads, India has the 2nd largest road system in the world only after the U.S. The National (Interstate) Highways constitute 70,000 kilometers of roads and India intends to double this network in the next 5 years. Additionally, it also intends to increase the overall road network to 5 million kilometers in the next decade, connecting all parts of the country with each other.

The Government of India's Planning Commission recently estimated that India will mobilize over $42 billion on spending for roads and related infrastructure over the next several years. These funds are to be utilized to:

- Upgrade and expand the state highway network in the different states of India (to be funded by the Asian Development Bank);
- The Municipal Corporation of Delhi plans to spend $1.24 billion for upgrading the City of Delhi's roads and infrastructure as are other big cities;
- National Highway projects worth approximately $24.65 billion will be executed in the country connecting the freight corridors running from North-South and East-West to the interiors;
- Set up related infrastructure—toll booths, warehousing facilities, connector and feeder lanes, etc. to the highway systems.

The Government of India is also formulating regulatory changes to the awarding process and concession agreements to attract more participation from private and foreign developers.

Railways: A lifeline to the nation, Indian Railways has the 2nd largest railroad network in the world and is the largest employer in India today. Indian Railways has embarked upon a massive restructuring and expansion program over the next decade to modernize the existing network and add new lines. It's estimated that in the 12th five year plan (2012- 2017), Indian Railways will spend about $67 billion on the following:

- Building new routes including Dedicated Freight Corridors (DFC) with Public-Private Partnership (PPP) sub-projects envisaging more than $7 billion investment for the North South, East West corridors alone
- Enhancing container operations
- Setting up of rail side warehousing facilities
- Developing logistics parks
- Development of rail links to existing and new ports
- Dedicated rail links for evacuation of specific industrial items
- Modernization of railway stations and systems including rolling stock

Airports: In terms of domestic air traffic, India is the fourth largest civil aviation market in the world behind the U.S., China and Japan. In FY 2011, India's domestic passenger growth rate was 11 percent and Indian air traffic is expected to grow at a compound annual growth rate of 8–10 percent over the next 20 years. Despite these numbers, India is one of the least penetrated air markets in the world (even lower than Sri Lanka, Pakistan and Nigeria) with 0.02 trips per capita as compared to 0.2 of China and 2.2 in the U.S. This reflects significant potential for future growth.

India has a total of 454 airports with the Airports Authority of India (AAI) managing 118 of these airports. The AAI develops and manages airports and also provides air traffic management services and air infrastructure. Even as existing airports continue to be upgraded, there is an urgent need for new airport infrastructure in the country. India currently has just 89 operational airports but that number is expected to increase to between 300 and 500 by 2030. Starting from a relatively small base, the airport infrastructure sector in India faces the prospect of significant expansion as the overall economy continues to grow rapidly.

Investment opportunities of $110 billion are being envisaged up to 2020 with $80 billion in new aircraft and $30 billion in development of airport infrastructure, according to the Investment Commission of India. AAI plans to allocate $12 billion for airport infrastructure development in its next five-year plan (2012–2017), a 30 percent increase from its last five-year plan. To ensure that the development of the sector was not restricted to the metro cities alone, the GOI announced its plans to modernize 35 non-metro airports into world-class entities at an estimated cost of $1.2 billion. The airports to be modernized include airports such as Coimbatore, Tiruchi, Thiruvananthapuram, Visakhapatnam, Port Blair, Mangalore, Agatti, and Pune. This is in addition to the large metro airports where modernization is either completed or in progress and also includes commercial developments, hotels and other passenger related amenities. The Ministry of Civil Aviation has also approved greenfield airports at Navi Mumbai, Goa, Durgapur, Kannur, and Saras. The International Trade Administration (ITA) has a strong history of cooperation with India on airport infrastructure development through its participation in the Civil Aviation Subcommittee of the U.S.-India High-Technology Cooperation Group and the Airport Infrastructure Working Group. During the November 16–18, 2011 U.S.-India Aviation Summit in New Delhi, Nicole Lamb-Hale, Assistant Secretary of Commerce for Manufacturing and Services, announced an agreement with the Indian Ministry of Civil Aviation on facilitating U.S. participation in the development of three regional airports, Puducherry, Tuticorin and Jharsuguda, which will be the focus of U.S.-India efforts to promote U.S. business participation in the development of India's civil aviation infrastructure. The U.S.-India relationship in civil aviation is very strong and there are significant opportunities for U.S. firms in the area of airport development, consulting and equipment supply.

Intelligent Transportation Systems (ITS): The Indian automobile industry manufactures over 11 million vehicles and exports about 1.5 million each year. Due to the phenomenal growth in the number of vehicles in the country, the need to upgrade India's traffic management systems has become pressing. With traffic speeds in cities being reduced to a crawl during most parts of the day and accident rates showing no sign of decreasing, the need for smoother, safer road transport is greater than ever.

Given the vibrant Indian automobile, electronics and ICT industries and the country's highly skilled labor force, the prospects for ITS development and deployment in India are bright. The current market for ITS is estimated to be $150 million and it is projected to grow at 10–12 percent annually.

The Government of India is improving its transportation management system through the use of intelligent

transportation systems. Priority areas include:

- Vulnerable individual protection systems.
- Traffic management.
- Emergency management systems.
- Commercial vehicle operations.
- Traffic and traveler information.
- Public transport systems.

Energy (Transmission, Distribution and Smart Grid): India is the fastest growing electricity market in the world, with demand expected to increase by approximately 500% over the next four decades—nearly twice the rate of China. The Indian electricity sector faces major challenges in trying to meet the continuously expanding demand-supply gap. As a result, the Government of India has announced plans to add 100 gigawatts of new generation capacity by 2017 through an investment of $102 billion in power plants. An additional $102 billion investment in the transmission and distribution sectors is also envisaged. These initiatives will create huge opportunities for U.S. equipment manufacturers; Build, Own, Operate/Transfer (BOT); and Engineering, Procurement and Construction (EPC) companies to explore.

In July 2011, India announced a $132 million smart grid pilot project on top of other major recent investments in electric grid modernization and smart grid technologies in order to extend electricity services to rural populations, ensure reliability in fast growing urban areas, and enable critical resource management and energy efficiency applications for both utilities and citizens.

The Indian electricity sector faces many challenges in trying to meet the ever increasing demand-supply gap. Energy losses in India's transmission and distribution sector exceed 30%, which is one of the highest in the world. Upgrading out-of-date transmission and distribution systems coupled with the need to reduce electricity losses and theft is driving the deployment of smart grid technologies in India. The real challenge in the power sector in India lies in managing the upgrading of the transmission, distribution and metering efficiently. In response to these challenges, India will look to foreign technology suppliers for the following:

- Advanced metering to reduce AT&C (Aggregate Technical and Commercial) losses that are currently at high levels
- Automation to measure and control the flow of power to/from consumers on a near real-time basis and improve system reliability
- Moving to a smart grid to manage loads, congestion, and supply shortages in an intelligent manner

U.S. companies can explore the possibility of entering the Indian smart grid market by working with Indian companies in these pilot projects. 2012 will be an important year as the smart grid market begins maturing in India and U.S. firms are poised to deliver world-class smart grid solutions to Indian utilities.

Other Products and Services: The foregoing analysis of infrastructure export opportunities in India is not intended to be exhaustive, but illustrative of the many opportunities available to U.S. businesses. Applications from companies selling products or services within the scope of this mission, but not specifically identified, will be considered and evaluated by the U.S. Department of Commerce. Companies whose products or services do not fit the scope of the mission may contact their local U.S. Export Assistance Center (USEAC) to learn about other trade missions and services that may provide more targeted export opportunities. Companies may call 1–(800) 872–8723, or email: *tic@trade.gov* to obtain such information. This information also may be found on the Web site: *http://www.export.gov.*

Mission Stops

New Delhi. New Delhi, India's capital, serves as the seat of the Government of India (GOI) and the government of the National Capital Territory of New Delhi. The city is known for its wide, tree-lined boulevards and is home to numerous national institutions and landmarks. The city's service sector has expanded due in part to the large skilled English-speaking workforce that has attracted many multinational companies. Key service industries include information technology, telecommunications, hotels, banking, media and tourism. Most U.S. companies, with offices in India are either headquartered in New Delhi or have an active office in this city. U.S. trade associations, such as the American Chamber of Commerce and the U.S. India Business Council, as well as, Indian trade associations, representing thousands of Indian companies, such as Confederation of Indian Industry (CII) and Federation of Indian Chambers of Commerce and Industry (FICCI) are also headquartered in New Delhi.

Jaipur. Jaipur, the capital of the State of Rajasthan, is a rapidly growing and progressive region embarking upon major upgrades of its infrastructure. Rajasthan is a leader in the production of renewable energy through both wind and solar generation. It has recently begun construction of a metro system and approximately 40 percent of the Delhi-Mumbai Industrial Corridor (DMIC) which includes new satellite industrial cities is being built adjacent to a high-speed rail freight line connecting the two major cities. Jaipur has been identified by the U.S. Commercial Service in India as one of the key second tier cities in India under the 'Growth in Emerging Metropolitan Sectors'' (GEMS) program which is aimed at building commercial ties between the U.S. and India's emerging cities and states.

Mumbai. Mumbai, located in the state of Maharashtra, is the commercial and financial center of India. Mumbai is India's largest city and home to almost 20 million people, and many of India's industrial powerhouses are headquartered in the city, including Tata, Reliance, and Mahindra all of which are very active in developing India's physical infrastructure. Mumbai is also at the center of India's civil engineering and architectural and design sector and U.S. firms are eagerly seeking to partner with these distinguished and capable firms to tap the Indian market. The region surrounding Mumbai has emerged as an industrial hub and several major U.S. corporations across a wide variety of sectors have established a presence in the region. It is not an exaggeration to say that Mumbai is truly the Gateway of India, and U.S. firms interested in doing business in India should make a point to visit this city.

Mission Goals

The mission will demonstrate the United States' commitment to a sustained economic partnership with India. The mission will combine Secretarial-level policy dialogue with business development goals for U.S. firms. The mission's purpose is to support participants as they construct a firm foundation for future business in India and specifically aims to:

- Assist in identifying potential partners and strategies for U.S. companies to gain access to the Indian market for infrastructure products and services.
- Provide an opportunity for participants to be present for policy and regulatory framework discussions with Indian government officials and private sector representatives to advance U.S. market access interests in India.
- Confirm U.S. Government support for activities of U.S. business in India and to provide access to senior Indian government decisionmakers.

• Listen to the needs, suggestions and experience of individual participants so as to shape appropriate U.S. Government positions regarding India and U.S. business interests.

• Organize private and focused events with local business and association leaders capable of becoming partners and clients for U.S. firms as they develop their business in India.

• Assist development of competitive strategies and market access with high level information gathering from private and public-sector leaders.

Mission Scenario

During the Infrastructure Business Development Mission to India the participants will:

• Meet with high-level Indian government officials.

• Meet with prescreened potential partners, agents, distributors, representatives and licensees.

• Meet with representatives of the U.S. and Indian Chambers of Commerce, industry and trade associations.

• Attend briefings conducted by Embassy officials on the economic and commercial climates.

• Site visit(s) to see first-hand major infrastructure development projects.

Receptions and other business events will be organized to provide mission participants with further opportunities to speak with local business and government representatives, as well as U.S. business executives living and working in the region.

Planned Timetable

Mumbai

Sunday—March 25

• Arrive Mumbai.

• Orientation.

• Briefing from U.S. Government trade finance agencies.

• Economic/market briefing by U.S. Consulate officials.

• Welcome dinner.

Monday—March 26

• One-on-one business meetings for the delegation.

• Meetings with local government officials.

• Business event/briefing with local industry representatives.

Reception hosted by U.S. Consul General.

Tuesday—March 27

• One-on-one business meetings for the delegation.

• Meetings with senior Indian industry and government officials.

Departure for Jaipur.

Jaipur, Rajasthan

Tuesday—March 27

• Arrive from Mumbai.

Evening business event.

Wednesday–March 28

• Site visits to infrastructure projects in Jaipur, Rajasthan metropolitan area.

• Meetings with local industry and government officials.

Departure for New Delhi.

New Delhi

Wednesday—March 28

Arrive from Jaipur.

Thursday—March 29

• Economic/market briefing by U.S. Government officials.

• Business event/briefing with local industry representatives.

• High-level government meetings and roundtables for delegates.

• One-on-one business meetings for the delegation.

• Reception hosted by the U.S. Ambassador.

Friday—March 29

• One-on-one business meetings for the delegation.

• Government and industry meetings.

• Wrap-up discussion and closing dinner.

• Mission ends/departure.

Participation Requirements

All parties interested in participating in the Secretarial Infrastructure Business Development Mission must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. Approximately 20–25 companies will be selected from the applicant pool to participate in the mission.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee, based on 25 companies, will be $11,000 for large firms and $9,000 for a small or medium-sized enterprise (SME), which includes one principal representative.[1] The fee for each additional firm representative (large firm or SME) is $2,000.

Expenses for travel arrangements to and from India, lodging, some meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Office of Business Liaison receives an incomplete application, the Department of Commerce may either: Reject the application, request additional information/clarification, or take the lack of information into account when evaluating the applications.

Each applicant must also:

- Certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content. In cases where the U.S. content does not exceed fifty percent, especially where the applicant intends to pursue investment and major project opportunities, the following factors, may be considered in determining whether the applicant's participation in the trade mission is in the U.S. national interest:
  - U.S. materials and equipment content;
  - U.S. labor content;
  - Repatriation of profits to the U.S. economy;
  - Potential for follow-on business that would benefit the U.S. economy;
- Certify that the export of the products and services that it wishes to export through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department of Commerce that may present the appearance of a conflict of interest;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

Selection Criteria for Participation

Selection will be based on the following criteria in decreasing order of importance:

- Consistency of company's products or services with the scope and desired outcome of the mission's goals;
- Suitability of a company's products or services to the Indian market and the likelihood of a participating company's increased exports to or business interests in India as a result of this mission;
- Demonstrated export experience in India and/or other foreign markets;
- Prior experience in public discussions, such as through conferences, business organizations, public/private entities, or academic fora, on policy issues related to market access for U.S. firms in India;
- Current or pending major project participation; and
- Rank/seniority of the designated company representative.

Additional factors, such as diversity of company size, type, location, and demographics, may also be considered during the review process.

Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.export.gov/trademissions/*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The Commerce Department's Office of Business Liaison and the International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Recruitment for this mission will begin immediately upon approval. Applications can be completed on-line at the India Infrastructure Business Development Mission Web site at *http://www.export.gov/IndiaMission2012* or can be obtained by contacting the U.S. Department of Commerce Office of Business Liaison ((202) 482–1360 or *BusinessLiaison@doc.gov*).

The application deadline is Wednesday, January 25, 2012. Completed applications should be submitted to the Office of Business Liaison. Applications received after Wednesday, January 25, 2012 will be considered only if space and scheduling constraints permit.

General Information and Applications: The Office of Business Liaison, 1401 Constitution Avenue NW., Room 5062, Washington, DC 20230, *Tel:* (202) 482–1360, *Fax:* (202) 482–4054, *Email: BusinessLiaison@doc.gov.*

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2011–32970 Filed 12–22–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management Program: Illinois

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: NOAA's Office of Ocean and Coastal Resource Management (OCRM) announces availability of the Final Environmental Impact Statement (FEIS) on the Illinois Coastal Management Program (ICMP). NOAA has received the State of Illinois' application for approval of its coastal management program under the Coastal Zone Management Act (CZMA), as amended at 16 U.S.C. 1451–1466, and the implementing regulations at 15 CFR Part 923. The draft ICMP and Draft Environmental Impact Statement (DEIS) were released to the public for a 45-day comment period on September 15, 2011, and a public hearing was held in Chicago, Illinois on October 14, 2011 (76 FR 57022). The comment period expired on October 31, 2011. The FEIS includes consideration of all comments received during the official comment period for the DEIS. The FEIS has been distributed to interested parties and responsible government agencies.

DATES: NOAA must receive comments on or before January 22, 2012.

ADDRESSES: Copies of the FEIS described in this notice is available upon request to Diana Olinger, Coastal Program Specialist, OCRM/CPD, N/ORM3, Station 11204, 1305 East-West Highway, Silver Spring, MD 20910. The FEIS can also be viewed on the Internet and downloaded at OCRM's Web site: *http://coastalmanagement.noaa.gov/mystate/il.html,* or the Illinois Department of Natural Resource's Web site: *http://www.dnr.illinois.gov/cmp/Pages/documentation.aspx.*

FOR FURTHER INFORMATION CONTACT: Diana Olinger, Coastal Program Specialist, National Oceanic and Atmospheric Administration, OCRM/CPD, N/ORM3, Station 11204, 1305 East-West Highway, Silver Spring, MD 20910, telephone (301) 563–1149, facsimile (301) 713–4367, email *Diana.Olinger@noaa.gov.* NOAA is not required to respond to comments received as a result of issuance of the FEIS; however, comments will be reviewed and considered for their impact on issuance of the Record of Decision (ROD).

SUPPLEMENTARY INFORMATION: The Coastal Zone Management Act authorizes the Secretary of Commerce (Secretary) to review and approve a state's coastal management program. This authority has been delegated by the Secretary to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS). Illinois has submitted a coastal management program to NOAA for approval. The ICMP is the result of substantial efforts on the part of Federal, State, and local agencies, regional organizations, and public and private entities.

Upon finding that a state program has satisfied the requirements of the CZMA, NOAA is required to prepare a DEIS and an FEIS, in accordance with the requirements of the National Environmental Policy Act, as amended at 42 U.S.C. 4321–4370h, and regulations at 40 CFR parts 1500–1508. The proposed Federal action is approval of the ICMP. NOAA's approval of the ICMP would make Illinois eligible for program administration grant funds, would require Federal actions to be consistent with the federally-approved program, and would enhance governance of Illinois' coastal land and water uses according to coastal policies and standards contained in Illinois statutes, authorities, and rules.

Alternative actions analyzed in the FEIS include:

• Federal Approval—OCRM can issue an approval based on a finding that the ICMP meets all requirements of the CZMA and other federal statutes (the preferred alternative).

• ''No action''—OCRM can take no action or deny approval based on a finding that the ICMP does not meet all requirements of the CZMA and/or other federal statutes.

• Delay Federal Approval—OCRM could delay approval if any element of the ICMP necessary for program approval is not satisfied and require that the ICMP be modified.

The FEIS analyzes environmental impacts that may result from implementation of the preferred and alternative actions.

Decision Process

The government's decision as to how to proceed will be announced in a Record of Decision (ROD) to be issued no earlier than 30 days after publication of this Notice of Availability.

Dated: December 9, 2011.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–32898 Filed 12–22–11; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA890

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a meeting of the Standing and Special Reef Fish Scientific and Statistical Committee (SSC).

DATES: The meeting will convene at 1 p.m. on Monday, January 9, 2012 and conclude by 12 p.m., Thursday, January 12, 2012.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607, telephone: (813) 348–1630.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Standing and Special Reef Fish SSC will review updated catch data and other updated information on the red snapper fishery provided by the Southeast Fisheries Science Center, and will recommend a level of acceptable biological catch beginning in 2012. The SSC will also review an update stock assessment on gray triggerfish and will recommend a level of acceptable biological catch for that stock. In addition, the SSC will be asked for volunteers from within its membership to participate in the SEDAR 31 red snapper benchmark assessment scheduled to begin in the summer of 2012. The SSC will also discuss the formation of a sub-group to suggest recommendations for revisions to the ABC control rule that was developed in the Generic Annual Catch Limits/Accountability Measures Amendment. Finally, the SSC will conduct an additional review of analysis by the National Marine Fisheries Service on the effect of minimum size limits on greater amberjack yield-per-recruit and spawning potential ratio. The SSC had previously reviewed this analysis in October, but had not received all of the documentation.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 20, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–32958 Filed 12–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA891

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene Public Hearings on Amendment 35 to the Reef Fish Fishery Management Plan and Amendment 11 to the Spiny Lobster Fishery Management Plan in the Gulf of Mexico and South Atlantic Regions.

DATES: Public hearings for Amendment 35 (Reef Fish) and Amendment 11 (Spiny Lobster) will be held at nine locations throughout the Gulf of Mexico and Florida Keys from January 9, 2012 through January 24, 2012. The public hearings will begin at 6 p.m. and will conclude no later than 9 p.m. For specific dates, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The public meetings will be held at locations listed in the **SUPPLEMENTARY INFORMATION**. *Council address:* Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Fishery Biologist at Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Reef Fish Amendment 35

The Council is holding seven public hearings on Amendment 35 to the Reef Fish Fishery Management Plan which modifies the greater amberjack

rebuilding plan, adjusts the Stock Annual Catch Limit, and considers commercial and recreational management measures consistent with the modified Stock Annual Catch Limit. These actions are proposed in response to the results from the 2011 Greater Amberjack Stock Assessment which determined the stock is both overfished (population is too low) and undergoing overfishing (rate of removals too high). To achieve the reductions in the Stock Annual Catch Limit the Council is looking at changes to the current recreational minimum size limit and fixed closed seasons. For the commercial sector the Council is looking at adding trip limits and potentially removing the fixed closed season.

Spiny Lobster Amendment 11

The Gulf Council is holding two public hearings on Amendment 11 in the Florida Keys. The purpose of Amendment 11 to the Spiny Lobster Fishery Management Plan is protect threatened and endangered species in a manner that complies with measures established in the 2009 biological opinion and meets the requirements of the Endangered Species Act. The Gulf of Mexico and South Atlantic Fishery Management Councils are considering the following two actions to achieve these goals: (1) Closing areas to either all spiny lobster fishing or the lobster trap fishery to protect threatened corals and (2) Requiring gear markings for spiny lobster trap lines to allow identification of trap lines entangling protected species.

The Public Hearings will begin at 6 p.m. and conclude at the end of public testimony or no later than 9 p.m. at the following locations:

Reef Fish Amendment 35

Monday, January 9, 2012—Hilton Tampa Airport Westshore—2225 North Lois Avenue, Tampa, FL 33607, telephone: (813) 877–6688.

Wednesday, January 11, 2012—Crowne Plaza New Orleans Airport—2829 Williams Boulevard, Kenner, LA 70062, telephone: (504) 467–5611; Hilton Garden Inn Orange Beach Beachfront—23092 Perdido Beach Boulevard, Orange Beach, AL 36561, telephone: (251) 974–1600.

Thursday, January 12, 2012—Four Points by Sheraton, 940 Beach Boulevard, Biloxi, MS 39530, telephone: (228) 546–3100; Hilton Garden Inn Panama City—1101 U.S. Highway 231, Panama City, FL 32405, telephone: (850) 392–1093.

Tuesday, January 17, 2012—Hilton San Luis, 5400 Seawall Boulevard, Galveston Island, TX 77551, telephone: (409) 744–5000.

Wednesday, January 18, 2012—Plantation Suites & Conference Center, 1909 Highway 361, Port Aransas, TX 78379, telephone: (361) 749–3866.

Spiny Lobster Amendment 11

Monday, January 23, 2012—Marathon Government Center, 2798 Overseas Highway, Marathon, FL 33050, telephone: (305) 289–6036.

Tuesday, January 24, 2012—Harvey Government Center, 1200 Truman Avenue, Key West, FL 33040, telephone: (305) 295–4385.

Copies of the documents can be obtained by calling (813) 348–1630.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 20, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–32957 Filed 12–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA893

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will convene a meeting via conference call of the Ecosystem Plan Development Team (EPDT) which is open to the public.

DATES: The EPDT will meet on Thursday, January 19, 2012 from 1:30 p.m. to 5 p.m., or when business for the day is completed.

ADDRESSES: A public listening station will be available at the Pacific Council Office, Small Conference Room, 7700 NE Ambassador Place, Suite 101; Portland, OR 97220; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Mike Burner, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: Please note, this is not a public hearing; it is a work session for the primary purpose of drafting a report and recommendations to the Council on the Development of a Fishery Ecosystem Plan (FEP). The EPDT will primarily address Council requests from the November 2011 Council meeting. The primary purpose of the meeting is to revise and expand sections of the Council's developing Fishery Ecosystem Plan, discuss the content and format of an annual ecosystem report, explore mechanisms for incorporating ecosystem science into stock assessments, and revisit the need and mechanisms for expanding protective measures for unexploited forage species. The EPDT may also develop recommendations for the March 2012 Council meeting.

Although non-emergency issues not contained in the meeting agenda may come before the EPDT for discussion, those issues may not be the subject of formal EPDT action during this meeting. EPDT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: December 20, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–32959 Filed 12–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 111215762–1761–01]

RIN 0605–XA42

Privacy Act of 1974: Systems of Records

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), the Department of Commerce is issuing this notice of its intent to delete the system of records entitled ''COMMERCE/NTIA–1, Applications Related to Coupons for Digital-to-Analog Converter Boxes.'' The Digital-to-Analog Converter Box Program has been terminated and this system of records is to be deleted to comply with the applicable Disposition Authority.

DATES: To be considered, written comments must be submitted on or before January 23, 2012. Unless comments are received, the deletion of the system of records will become effective on the date of publication of a subsequent notice in the **Federal Register**.

ADDRESSES: Written comments may be mailed to Danielle N. Rodier, Attorney-Advisor, Office of the Chief Counsel, National Telecommunications and Information Administration, Room 4713, 1401 Constitution Avenue NW., Washington, DC 20230. Paper submissions should include a 3½ inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organization affiliation of the filer, and the name of the word processing program used to create the document. Comments may be submitted electronically to the following electronic mail address: *sor-comments@ntia.doc.gov.* Comments submitted via electronic mail also should be submitted in paper or diskette formats. Comments will be posted on NTIA's Web site at *www.ntia.doc.gov/ntiahome/occ/sorcomments.*

SUPPLEMENTARY INFORMATION: The National Telecommunications and Information Administration (NTIA), Department of Commerce, created a Privacy Act System of Records for coupon applications under the Digital-to-Analog Converter Box Program. The System of Records, COMMERCE/NTIA–1, ''Applications Related to Coupons for Digital-to-Analog Converter Boxes,'' is comprised of applications' household information: (1) Name; (2) address; (3) the number of coupons requested; (4) a certification as to whether the household receives cable, satellite, or other pay television; and (5) name of nursing home facility, if applicable. *See* Privacy Act of 1974; System of Records Notice, 73 FR 171 (Jan. 2, 2008); Privacy Act of 1974; System of Records, Notice, 74 FR 2060 (Jan. 14, 2009) (amending the original System of Records to include nursing home facility names).

NTIA is now preparing to delete this System of Records. The National Archives and Records Administration (NARA) authorized NTIA to dispose of records (Disposition Authority) associated with the NTIA Digital Converter Box Coupon Program, including this System of Records. See Request for Records Disposition Authority, N1–417–08–1 (July 13, 2009), available at (*http://www.archives.gov/records-mgmt/rcs/schedules/departments/department-of-commerce/rg-0417/n1-417-08-001_sf115.pdf).* The Disposition Schedule provides that applicant household records are to be deleted two years after termination of the program. NTIA determined that the date for termination of the program was December 31, 2009 because the essential functions of the program had ceased by that date. Accordingly, this Privacy Act System of Records is being deleted to comply with the Disposition Authority.

Jonathan R. Cantor,

Chief Privacy Officer, Department of Commerce.

[FR Doc. 2011–32942 Filed 12–22–11; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 1/23/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 10/14/2011 (76 FR 63905–63906) and 10/28/2011 (76 FR 66913–66914), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. chapter 85 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.

2. The action will result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. chapter 85) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Grounds Maintenance, United States Southern Command, 9301 NW 33rd Street, Doral, FL.

NPA: Goodwill Industries of South Florida, Inc., Miami, FL.

Contracting Activity: DEPT OF THE ARMY, W6QL ECC MIAMI DIV, MIAMI, FL.

Service Type/Location: Industrial Laundry Service, Bureau of Engraving and Printing, (Offsite: 880 Mustang Dr., Grapevine, TX), 9000 Blue Mound Road, Fort Worth, TX.

NPA: Goodwill Industrial Services of Fort Worth, Inc., Fort Worth, TX.

Contracting Activity: DEPT OF TREASURY, BUREAU OF ENGRAVING AND PRINTING, WASHINGTON, DC.

Patricia Briscoe,

Deputy Director, Business Operations, Pricing and Information Management.

[FR Doc. 2011–32930 Filed 12–22–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 1/23/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or To Submit Comments Contact: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 USC 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.
2. If approved, the action will result in authorizing small entities to provide the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC Chapter 85) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Service, Eastern ARNG Aviation Training Site, Capital City Airport Hanger 2, 240 Airport Road, New Cumberland, PA.
NPA: Opportunity Center, Incorporated, Wilmington, DE.
Contracting Activity: DEPT OF THE ARMY, W7NX USPFO ACTIVITY PA ARNG, ANNVILLE, PA.
Service Type/Location: Dining Facility Attendant, Bldgs. 1162 & 2382, Fort Polk, LA.
NPA: Lakeview Center, Inc., Pensacola, FL.
Contracting Activity: DEPT OF THE ARMY, W6QM FT POLK DOC, FORT POLK, LA.

Patricia Briscoe,

Deputy Director, Business Operations, Pricing and Information Management.

[FR Doc. 2011–32929 Filed 12–22–11; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Draft Environmental Impact Statement/ Environmental Impact Report for Proposed Berths 302–306 American President Lines (APL) Container Terminal Project, Port of Los Angeles, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District Regulatory Division (Corps), in coordination with the Los Angeles Harbor Department/Port of Los Angeles, has completed a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Berths 302–306 American Presidents Line (APL) Container Terminal Project. This Notice serves as the Public Notice/ Notice of Availability for the Draft EIS/ EIR for the project.

Berths 302–305 are currently operational and encompass approximately 291 acres of land and water including 12 container cranes, a 4,000-foot-long wharf, utility infrastructure, truck gates, intermodal rail, and terminal buildings to support operations. The Project would result in an additional 12 container cranes distributed among Berths 302–306 with eight new cranes proposed at Berth 306, a new 1,250-foot-long wharf at Berth 306, and development of 41 acres of backlands for container storage and distribution, including installation of utility infrastructure to support future automation at Berth 306 and the 41 acre backland. The Project would result in an approximately 347-acre marine container terminal, and would include the following construction and operational elements: dredging, wharf construction, additional container cranes; expanded container yard and associated structures and utilities; modification of truck gates, associated structures, and roadwork.

The Port of Los Angeles (Port) requires authorization pursuant to Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act, to implement regulated activities in and over waters of the U.S. associated with expanding the existing APL container terminal. The Corps and the Port as the state lead agency have agreed to jointly prepare an EIS/EIR in order to optimize efficiency and avoid duplication. The EIS/EIR is intended to be sufficient in scope to address federal, state, and local requirements and environmental issues concerning the proposed activities and permit approvals. The following proposed activities require authorization from the Corps: (1) Construction of a new 1,250-foot-long concrete pile supported wharf at Berth 306 which is immediately adjacent to the existing 4,000-foot-long wharf at Berths 302–305, (2) installation of 12 new gantry cranes between Berths 302–306 with at least eight (8) new cranes at Berth 306 associated with development and operation of the 41-acre backlands at Berth 306, (3) dredging of approximately 20,000 cubic yards (cy) of sediment from Berth 306 to increase the depth to −55 feet mean lower low water (MLLW) plus an additional two feet of overdepth dredging to −57 feet MLLW, (4) disposal of dredged material in Berth 243–245 confined disposal facility (CDF), the Cabrillo Shallow Water Habitat Area, or at LA–2 (unconfined ocean disposal).

FOR FURTHER INFORMATION CONTACT: Copies of the Corps Public Notice are available at: *http://www.spl.usace.army.mil/regulatory/.* Copies of the EIS/EIR are available at *http://www.portoflosangeles.org*, and at the following locations:

- Port of Los Angeles Administration Building

- Los Angeles City Library, San Pedro Branch
- Los Angeles City Library, Wilmington Branch
- Los Angeles Public Library, Central Branch

Questions or requests concerning the Draft EIS/EIR should be directed to: Theresa Stevens, Ph.D., U.S. Army Corps of Engineers, Los Angeles District-Regulatory Division, North Coast Branch 2151 Alessandro Drive, Suite 110, Ventura, California 93001, (805) 585–2146 or via email to *theresa.stevens@usace.army.mil.*

Public Hearing and Comment Period: The U.S. Army Corps of Engineers and the Port of Los Angeles will jointly hold a public hearing to receive public comments and to assess pubic concerns regarding the Draft EIS/EIR and project on January 19, 2012, starting at 6 p.m. (doors open at 5:30 p.m.) in the Board Room of the Harbor Administration Building, located at 425 S. Palos Verdes Street, San Pedro, CA 90731. Written comments will be accepted until the close of the 45-day public review on February 17, 2012.

SUPPLEMENTARY INFORMATION: None.

Aaron O. Allen,

Chief, North Coast Branch, Regulatory Division.

[FR Doc. 2011–32955 Filed 12–22–11; 8:45 a.m.]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Indian Education—Demonstration Grants for Indian Children

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Indian Education—Demonstration Grants for Indian Children Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.299A.

Dates:

Applications Available: December 23, 2011.

Deadline for Transmittal of Applications: February 21, 2012.

Deadline for Intergovernmental Review: April 23, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Demonstration Grants for Indian Children program is to provide financial assistance to projects that develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary Indian students.

Priorities: This competition contains two absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priorities are from the regulations for this program (34 CFR 263.21(c)(1) and (3)). In accordance with 34 CFR 75.105(b)(2)(iv), the competitive preference priorities are from sections 7121(d)(1)(B) and 7143 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7441(d)(1)(B) and 7473).

Absolute Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or both of the following priorities.

These priorities are:

Absolute Priority One

School readiness projects that provide age-appropriate educational programs and language skills to three- and four-year-old Indian students to prepare them for successful entry into school at the kindergarten school level.

Absolute Priority Two

College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including math and science, to enable Indian students to transition successfully to postsecondary education.

Competitive Preference Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets one or both of these priorities.

These priorities are:

Competitive Preference Priority One

We award five competitive preference priority points to an applicant that presents a plan for combining two or more of the activities described in section 7121(c) of the ESEA over a period of more than one year.

Note: For *Competitive Preference Priority One,* the combination of activities is limited to the activities described in the *Absolute Priorities* section of this notice.

Competitive Preference Priority Two

We award five competitive preference priority points to an application submitted by an eligible Indian tribe, Indian organization, or Indian institution of higher education, including a consortium of any of these entities with other eligible entities. An application from a consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five competitive preference points. These competitive preference points are in addition to the five competitive preference points that may be given under *Competitive Preference Priority One.*

Note: A consortium agreement, signed by all parties, must be submitted with the application in order for the application to be considered a consortium application. Letters of support do not meet the requirement for a consortium agreement. We will reject any application from a consortium that does not meet this requirement.

Program Authority: 20 U.S.C. 7441(c).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 263.

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: The Administration has requested $3,118,000 for new awards for this program for FY 2012. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000—$300,000.

Estimated Average Size of Awards: $240,000.

Maximum Award: We will reject any application that proposes a budget

exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for this program are State educational agencies (SEAs); local educational agencies (LEAs), including charter schools that are considered LEAs under State law; Indian tribes; Indian organizations; federally supported elementary or secondary schools for Indian students (including Department of the Interior/Bureau of Indian Education-funded schools); Indian institutions (including Indian institutions of higher education); or a consortium of any of these entities.

An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must include a signed consortium agreement with the application. Letters of support do not meet the requirement for a consortium agreement.

Applicants applying in a consortium with or as an Indian organization must demonstrate that they meet the definition of ''Indian organization'' in 34 CFR 263.20.

The term ''Indian institution of higher education'' means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College) authorized in the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a *et seq.*).

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–(877) 433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–(877) 576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.299A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VII of this notice.

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 program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The suggested page limit for the application narrative is no more than 35 pages. The suggested standards for the narrative include:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is 12 point or larger but no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The suggested page limit does not apply to the cover sheet; the budget section, including the budget narrative justification; the consortium agreement, if applicable; the assurances and certifications; or the abstract, the resumes, the bibliography, or the letters of support.

3. *Submission Dates and Times:*

Applications Available: December 23, 2011. Deadline for Transmittal of Applications: February 21, 2012.

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* in 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 in 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: April 23, 2012.

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 of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* 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 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 CCR 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 business day.

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 CCR registration process may take five or more business days to complete.

If you are currently registered with the CCR, 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 CCR registration on an annual basis. This may take three or more business days to complete.

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/applicants/get_registered.jsp.*

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 Indian Education—Demonstration Grants for Indian Children program, CFDA number 84.299A 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 Indian Education—Demonstration Grants for Indian Children program 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 84.299, not 84.299A).

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 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 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 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 program 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 *http://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 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 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 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 prevent 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: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E231, Washington, DC 20202–6335. FAX: (202) 260–7779.

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 84.299A, 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 84.299A, 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 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 selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

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 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 also 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). We may also notify you informally.

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. *Grant Administration:* Projects funded under this competition are encouraged to budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period.

4. *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 this 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 *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Demonstration Grants for Indian Children program: (1) The percentage of three- and four-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, at a minimum, on an approved assessment of language and communication development as evidenced by a pre- and post-test each project year; (2) the percentage of three- and four-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, at a minimum, on an approved assessment of cognitive skills and conceptual knowledge as evidenced by a pre- and post-test each project year; (3) the percentage of three- and four-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, on an approved assessment of social development as evidenced by a pre- and post-test each project year; (4) the percentage of high school American Indian and Alaska Native students successfully completing (as defined by a passing grade of C or better) at least three years of challenging core courses (English, mathematics, science, and social studies) by the end of their fourth year in high school; and (5) the percentage of American Indian and Alaska Native students who graduate with their incoming ninth-grade cohort (not counting those who transfer to another school).

We encourage applicants to demonstrate a strong capacity to provide reliable data on these measures in their responses to the selection criteria ''Quality of project services'' and ''Quality of the project evaluation.'' All grantees will be expected to submit, as part of their performance report, information with respect to these performance measures.

6. *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: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E231, Washington, DC 20202–6335. Telephone: (202) 205–2528 *mail to:* or by email: *Lana.Shaughnessy@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

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.

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: December 20, 2011.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2011–33001 Filed 12–22–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; Indian Education Formula Grants to Local Educational Agencies

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information

Indian Education Formula Grants to Local Educational Agencies.

Notice inviting applications for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.060A.

Dates:

Part I of the Formula Grant Electronic Application System for Indian Education (EASIE) Applications Available: January 9, 2012.

Deadline for Transmittal of Part I Applications: February 10, 2012, 11:59:59 p.m., Washington, DC time.

Part II of the Formula Grant EASIE Applications Available: April 2, 2012.

Deadline for Transmittal of Part II Applications: May 4, 2012, 11:59:59 p.m., Washington, DC time.

Note: Applicants must meet the deadlines for both Part I and Part II to receive funds as part of the initial grant awards, which we expect to issue around July 1, 2012. If there are funds remaining after the initial grant awards are made, the Department will give priority to applicants that filed a timely application for Part I, but missed the deadline for Part II. Applicants that missed the Part I deadline will only be funded if there are funds remaining after awards are made to all applicants that met the Part I deadline (including those applicants that met the Part I deadline, but missed the Part II deadline).

Deadline for Intergovernmental Review: July 3, 2012.

I. Funding Opportunity Description

Purpose of Program: The Indian Education Formula Grants to Local Educational Agencies program provides grants to support local educational agencies (LEAs) and other eligible entities described in this notice in their efforts to reform and improve elementary and secondary school programs that serve Indian students. The Department funds comprehensive programs that address the language and

cultural needs of Indian students, including professional development for teachers of Indian students, and that are designed to help Indian students meet the same State academic content and student academic achievement standards used for all students.

In addition, under section 7116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Secretary will, upon receipt of an acceptable plan for the integration of education and related services, and in cooperation with other relevant Federal agencies, authorize the entity receiving the funds under this program to consolidate all Federal formula funds that are to be used exclusively for Indian students. Instructions for submitting an integration of education and related services plan are included in the EASIE, which is described elsewhere in this notice under *Application Process and Submission Information.*

Note: Under the Indian Education Formula Grants to Local Educational Agencies program, applicants are required to develop the project for which an application is made (a) in open consultation with parents of Indian children and teachers and, if appropriate, Indian students from secondary schools, including through public hearings held to provide a full opportunity to understand the program and to offer recommendations regarding the program (section 7114(c)(3)(C) of the ESEA); (b) with the participation of a parent committee selected in accordance with section 7114(c)(4) of the ESEA and with the written approval of that parent committee (section 7114(c)(4) of the ESEA).

Program Authority: 20 U.S.C. 7421 *et seq.*

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Indian Education Formula Grants to Local Educational Agencies.

Estimated Available Funds: The Administration has requested $104,331,000 for this program for FY 2012. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $4,000–$2,738,000.

Estimated Average Size of Awards: $82,000.

Estimated Number of Awards: 1,276.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

III. Eligibility Information

1. *Eligible Applicants:* Certain LEAs, including charter schools authorized as LEAs under State law, as prescribed by section 7112(b) of the ESEA, certain schools funded by the Bureau of Indian Education of the U.S. Department of the Interior, as prescribed by section 7113(d) of the ESEA, and Indian tribes under certain conditions, as prescribed by section 7112(c) of the ESEA.

2.a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Section 7114(c)(1) of ESEA states that the local educational agency will use these grant funds only to supplement the funds that, in the absence of these Federal funds, such agency would make available for the education of Indian children, and not to supplant such funds.

IV. Application Process and Submission Information

1. *How to Request an Application:* Applications for grants under this program must be submitted electronically using the Formula Grant EASIE. 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 requirements, please refer to section IV.7. *Other Submission Requirements* of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under For Further Information Contact in section VI of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the online application package for this program. The online application requires the submission of data related to the Performance Measures, which are listed in this notice in section V. *Grant Administration Information.*

The application submission under this program is entirely electronic except for the submission of an Indian Parent Committee Approval form. After the Formula Grant EASIE Part II application is certified, the applicant must submit a signed Indian Parent Committee Approval form within three business days of certification. The form is available through the Formula Grant EASIE. This requirement applies only to applications from LEAs and does not apply to applications from Bureau of Indian Education schools or Indian tribes.

3. *Submission Dates and Times:* Part I of the Formula Grant Electronic Application System for Indian Education (EASIE) Applications Available: January 9, 2012.

Deadline for Transmittal of Part I Applications: February 10, 2012, 11:59:59 p.m., Washington, DC time.

Part II of the Formula Grant EASIE Applications Available: April 2, 2012.

Deadline for Transmittal of Part II Applications: May 4, 2012, 11:59:59 p.m., Washington, DC time.

Applications for grants under this program must be submitted electronically using the Formula Grant EASIE. 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 requirements, please refer to section IV.7. *Other Submission Requirements* of this notice.

For initial grant awards, we do not consider an application that does not comply with the deadline requirements of Part I of EASIE.

Individuals with disabilities who need an accommodation process should contact the person listed under For Further Information Contact in section VI 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: July 3, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations on 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* 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 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 CCR 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 business day.

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 CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, 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 CCR registration on an annual basis. This may take three or more business days to complete.

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 Indian Education Formula Grants to Local Educational Agencies—84.060A must be submitted electronically using the Formula Grant EASIE.

We will reject your application if you submit it in paper format unless you qualify for one of the exceptions to the electronic submission requirement described later in this section under Exception to Electronic Submission Requirement, and follow the submission rules outlined therein.

Formula Grant EASIE Electronic Application System: Formula Grant EASIE is an easy-to-use, electronic application system. It imports data from State submissions to ED*Facts,* the Department's data collection system that contains performance information from State educational agencies about schools and Federal education programs. To the extent that your State has provided the necessary ED*Facts* data files, Formula Grant EASIE will be able to interface with ED*Facts* and pull those LEA-specific data into the application. Additionally, this system allows the Department to review applications and interact online with applicants during the application review and approval process.

The Formula Grant EASIE application is divided into two parts—Part I and Part II.

Part I, Student Count, provides the appropriate data-entry screens to submit your Indian student count totals.

Part II, Program and Budget Information, provides your award amount based on the Indian student count total submitted under Part I. Part II also enables you to enter student performance data, identify your project's services and activities, and build a realistic program budget based on an estimated grant amount. Based on student assessment data, you will select your program objectives and services from a variety of menu options that were designed with grantee input.

Registration for Formula Grant EASIE: Entities are encouraged to register as soon as possible at the registration Web site: *www.easie.org* to ensure that any potential registration issues are resolved prior to the deadline for the submission of an application. The purpose of the initial registration is to re-activate entities' access to EASIE and to ensure that the correct entity information (e.g., NCES or DUNS numbers) is pre-populated into the first part of Formula Grant EASIE. The registration Web site does not serve as the entity's grant application. The registration must be completed by current, former, and new applicants interested in submitting an Indian Formula Grant EASIE application. For information on how to register, contact the ED*Facts* Partner Support Center listed elsewhere in this notice under For Further Information Contact.

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 EASIE system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the EASIE system;

and

- No later than two weeks before the application deadline date for Part I (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 prevent 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: Bernard Garcia, U.S. Department of Education, Office of Indian Education, 400 Maryland Avenue SW., Room 3E307, Washington, DC 20202–6335. Fax: (202) 205–0606.

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 U.S Department of Education, Office of Indian Education. You must mail the original and two copies of your application, on or before the application deadline dates for both Part I and Part II, to the Office of Indian Education at the following address: U.S. Department of Education, Office of Indian Education, Attention: CFDA Number 84.060A, 400 Maryland Avenue SW., Room 3E307, Washington, DC 20202–6335.

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.

For initial grant awards, if your application is postmarked after the application deadline date for Part I, 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 dates for both Part I and Part II, to the Department at the following address: U.S. Department of Education, Office of Indian Education, Attention: CFDA Number 84.060A, 400 Maryland Avenue SW., Room 3E307, Washington, DC 20202–6335.

The Program Office accepts hand deliveries daily between 8 a.m. and 4:30 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 Program Office 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 Office of Indian Education at (202) 260–3774.

V. Grant Administration Information

1. *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 a grant in the *Applicable Regulations* section of this notice.

2. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness and efficiency of the Indian Education Formula Grants to Local Educational Agencies program: (1) The percentage of American Indian and Alaska Native students in grades four and eight who score at or above the basic level in reading on the National Assessment of Educational Progress (NAEP); (2) the percentage of American Indian and Alaska Native students in grades four and eight who score at or above the basic level in mathematics on the NAEP; (3) the percentage of American Indian and Alaska Native students in grades three through eight meeting State performance standards by scoring at the proficient or the advanced levels in reading and mathematics on State assessments; (4) the difference between the percentage of American Indian and Alaska Native students in grades 3 through 8 at the proficient or advanced levels in reading and mathematics on State assessments and the percentage of all students scoring at those levels; (5) the percentage of American Indian and Alaska Native students who graduate from high school; and (6) the percentage of funds used by grantees prior to award close-out.

VI. Agency Contacts

For Further Information Contact: For questions about the Formula Grant Program, contact Bernard Garcia, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E307, Washington, DC 20202–6335. Telephone: (202) 260–1454 or by email: *Bernard.Garcia@ed.gov.* For questions about the EASIE application, contact the ED*Facts* Partner Support Center, telephone: (877) 457–3336 (877) HLP–EDEN or by email at: *eden_OIE@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the EDFacts Partner Support Center, toll free, at 1–(888) 403–3336 (888) 403–EDEN.

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 diskette) by contacting the ED*Facts* Partner Support Center. *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 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: December 20, 2011.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2011–33004 Filed 12–22–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 18, 2012; 5 p.m.

ADDRESSES: Atomic Testing Museum, 755 E. Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or email: *nssab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Fiscal Year 2014 Environmental Management Activities Prioritization.

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make

public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC, on December 19, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–32910 Filed 12–22–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy Advisory Committee (ERAC)

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open teleconference/Webinar.

SUMMARY: The purpose of ERAC is to provide advice and recommendations to the Secretary of Energy on the research, development, demonstration and deployment priorities within the field of energy efficiency and renewable energy. The Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: Thursday, January 12, 2012, 11 a.m.–1 p.m. (EST). To register for the webinar and receive the call-in information, please visit the Committee's Web site at: *www.erac.energy.gov.* You may also contact the Committee's Designated Federal Officer at the address or phone number below.

FOR FURTHER INFORMATION CONTACT: JoAnn Milliken, ERAC Designated Federal Officer, Senior Advisor, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington, DC, 20585. Phone number (202) 586–2480 and email: *erac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and recommendations to the Secretary of Energy on the research, development, demonstration and deployment priorities within the field of energy efficiency and renewable energy.

Tentative Agenda: (Subject to change; updates will be posted on: *www.erac.energy.gov*):

- Updates from the Appliance Standards Subcommittee regarding efforts to reach consensus on a proposed rule for regulating the energy efficiency of distribution transformers, as authorized by the Energy Policy Conservation Act (EPCA) of 1975, as amended, 42 U.S.C. 6313(a)(6)(C) and 6317(a).

Public Participation: Members of the public are welcome to observe the business of the meeting and make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email: *erac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information.

Time allotted per speaker will depend on the number of individuals who wish to speak but will not exceed five minutes. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business.

Participation in the meeting is not a prerequisite for submission of written comments. ERAC invites written comments from all interested parties. If you would like to file a written statement with the committee, you may do so either by submitting a hard or electronic copy before or after the meeting. Electronic copy of written statements should be emailed to *erac@ee.doe.gov.*

Minutes: The minutes of the meeting will be available for public review at *www.erac.energy.gov.*

Issued in Washington, DC, on December 19, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–32912 Filed 12–22–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, January 19, 2012, 5:30 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001. Phone (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda.
- Administrative Issues.
  - Recommendation 12–01: Progress Report on Groundwater Contamination.
  - Recommendation 12–02: Pro Nuclear Future Use for Paducah Gaseous Diffusion Plant Site.
- Public Comments.
- Adjourn.

Breaks Taken As Appropriate.

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments

outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2011Meetings.html.*

Issued at Washington, DC, on December 19, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–32913 Filed 12–22–11; 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 corporate filings:

Docket Numbers: EC12–50–000

Applicants: Alta Wind VIII, LLC, BAIF U.S. Renewable Power Holdings LLC

Description: Application for Authorization for Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act and Request for Expedited Action of Alta Wind VIII, LLC, *et al.*

Filed Date: 12/14/11

Accession Number: 20111214–5192

Comments Due: 5 p.m. ET 1/4/12

Docket Numbers: EC12–51–000

Applicants: Rensselaer Holdings, LLC, Rensselaer Cogeneration LLC

Description: Application for Authorization of Proposed Transaction of Rensselaer Holdings, LLC and Rensselaer Cogeneration LLC by Couch White, LLP.

Filed Date: 12/15/11

Accession Number: 20111215–5143

Comments Due: 5 p.m. ET 1/5/12

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3967–002

Applicants: Southwest Power Pool, Inc.

Description: Order No. 741 Compliance Filing to be effective 10/1/2011.

Filed Date: 12/14/11

Accession Number: 20111214–5155

Comments Due: 5 p.m. ET 1/4/12

Docket Numbers: ER11–3970–002

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 12–14–11 Credit Reform Compliance Filing to be effective 10/1/2011.

Filed Date: 12/14/11

Accession Number: 20111214–5169

Comments Due: 5 p.m. ET 1/4/12

Docket Numbers: ER11–4486–001

Applicants: ITC Midwest LLC

Description: ITC Midwest LLC submits tariff filing per 35.17(b): Response to a Deficiency Letter to be effective 11/9/2011.

Filed Date: 12/15/11

Accession Number: 20111215–5112

Comments Due: 5 p.m. ET 1/5/12

Docket Numbers: ER12–445–001

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.17(b): Errata Filing to PJM Tariff Sched. 12 Appendices re the RTEP Docket No. ER12–445 to be effective 2/16/2012.

Filed Date: 12/15/11

Accession Number: 20111215–5141

Comments Due: 5 p.m. ET 1/5/12

Docket Numbers: ER12–608–000

Applicants: Southwest Power Pool, Inc.

Description: Revisions to Att. X, Article Three—Minimum Criteria for Market Participation to be effective 1/1/2012.

Filed Date: 12/14/11

Accession Number: 20111214–5182

Comments Due: 5 p.m. ET 1/4/12

Docket Numbers: ER12–609–000

Applicants: ISO New England Inc., New England Power Pool Participants Committee

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Load Reconstitution for Demand Resources to be effective 3/1/2012.

Filed Date: 12/15/11

Accession Number: 20111215–5070

Comments Due: 5 p.m. ET 1/5/12

Docket Numbers: ER12–610–000

Applicants: Shiloh III Lessee, LLC

Description: Shiloh III Lessee, LLC submits tariff filing per 35.12: Shiloh III Lessee Baseline MBR Application Filing to be effective 12/16/2011.

Filed Date: 12/15/11

Accession Number: 20111215–5085

Comments Due: 5 p.m. ET 1/5/12

Docket Numbers: ER12–611–000

Applicants: Shiloh III Wind Project, LLC

Description: Shiloh III Wind Project, LLC submits tariff filing per 35.15: Shiloh III Wind Project FERC Electric Tariff Cancellation to be effective 12/31/9998.

Filed Date: 12/15/11

Accession Number: 20111215–5098

Comments Due: 5 p.m. ET 1/5/12

Docket Numbers: ER12–612–000

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc.'s Notice of Cancellation of Large Generator Interconnection Agreement.

Filed Date: 12/15/11

Accession Number: 20111215–5103

Comments Due: 5 p.m. ET 1/5/12

Docket Numbers: ER12–613–000

Applicants: FirstEnergy Service Company, FirstEnergy Solutions Corp.

Description: Request for Authorization to Make Wholesale Power Sales to an Affiliate Based on June 8, 2011 Bids of FirstEnergy Solutions Corp., et al.

Filed Date: 12/15/11

Accession Number: 20111215–5121

Comments Due: 5 p.m. ET 1/5/12

Docket Numbers: ER12–614–000

Applicants: FirstEnergy Solutions Corp., FirstEnergy Services Company

Description: Request for Authorization to Make Wholesale Power Sales to an Affiliate Based on October 26, 2011 Bids of FirstEnergy Solutions Corp., et al.

Filed Date: 12/15/11

Accession Number: 20111215–5123

Comments Due: 5 p.m. ET 1/5/12

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–32883 Filed 12–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–48–000.

Applicants: International Transmission Company.
Description: Application of International Transmission Company for approval of acquisition and disposition of transmission assets pursuant to section 203 of the Federal Power Act.
Filed Date: 12/14/2011.
Accession Number: 20111214–5145.
Comments Due: 5 p.m. ET 1/4/12.

Docket Numbers: EC12–49–000.
Applicants: Shiloh III Wind Project, LLC, Shiloh III Lessee, LLC.
Description: Joint Application for Authorization under Section 203 of the Federal Power Act and Request for Expedited Consideration of Shiloh III Wind Project, LLC, *et al.*
Filed Date: 12/14/2011.
Accession Number: 20111214–5146.
Comments Due: 5 p.m. ET 1/4/12.

Take notice that the Commission received the following exempt wholesale generator filings:
Docket Numbers: EG12–20–000.
Applicants: Shiloh III Lessee, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Shiloh III Lessee, LLC.
Filed Date: 12/13/11.
Accession Number: 20111213–5188.
Comments Due: 5 p.m. ET 1/3/12.

Take notice that the Commission received the following electric rate filings:
Docket Numbers: ER08–1126–004; ER08–1128–004; ER08–1129–004; ER08–1130–004; ER08–1131–004; ER08–1134–004; ER08–1135–004; ER08–1136–004; ER08–1137–004; ER08–1139–004.
Applicants: Georgia-Pacific Brewton LLC, Brunswick Cellulose, Inc., Georgia-Pacific Cedar Springs LLC, Georgia-Pacific Consumer Operations LLC Palatka, Georgia-Pacific Consumer Operations LLC Port Hudson, Georgia-Pacific Consumer Products LP Naheola, Georgia-Pacific Consumer Products LP Savannah, Georgia-Pacific LLC Crossett, Georgia-Pacific Monticello LLC, Leaf River Cellulose, LLC.
Description: Triennial MBR Filing on behalf of Georgia-Pacific Entities.
Filed Date: 12/14/11.
Accession Number: 20111214–5122.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER11–2815–004.
Applicants: PJM Interconnection, L.L.C., American Transmission Systems, Incorporated.
Description: Errata to Compliance Filing in Docket ER11–2815–002 re technical correction only to be effective 6/1/2011.
Filed Date: 12/13/11.
Accession Number: 20111213–5118.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: ER11–3949–003.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35: NYISO Compliance Filing re: Order 741 Directives to be effective 6/30/2012.
Filed Date: 12/14/11.
Accession Number: 20111214–5084.
Comments Due: 5 p.m. ET 1/4/12.

Docket Numbers: ER11–3973–002.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–12–14 CAISO's Credit Reform Compliance Filing to be effective 4/30/2012.
Filed Date: 12/14/11.
Accession Number: 20111214–5121.
Comments Due: 5 p.m. ET 1/4/12.

Docket Numbers: ER11–4272–002.
Applicants: ITC Midwest LLC.
Description: Filing of a Deficiency Response to be effective 10/10/2011.
Filed Date: 12/13/11.
Accession Number: 20111213–5089.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: ER11–4602–001.
Applicants: IDT Energy, Inc.
Description: IDT Energy, Inc. submits tariff filing per 35: Amendment to MBR Baseline to be effective 9/22/2011.
Filed Date: 12/14/11.
Accession Number: 20111214–5106.
Comments Due: 5 p.m. ET 1/4/12.

Docket Numbers: ER12–199–001.
Applicants: Coram California Development, L.P.
Description: Coram California Development, L.P. submits tariff filing per 35.17(b): Amendment to Coram California Development LP's Initial Market-Based Rate Tariff to be effective 2/1/2012.
Filed Date: 12/14/11.
Accession Number: 20111214–5125.
Comments Due: 5 p.m. ET 1/4/12.

Docket Numbers: ER12–328–001.
Applicants: Stony Creek Wind Farm, LLC.
Description: Amendment to Application For Category 1 Seller Designation In Southeast Region to be effective 1/1/2012.
Filed Date: 12/13/11.
Accession Number: 20111213–5105.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: ER12–598–000.
Applicants: New York Independent System Operator, Inc.
Description: Niagara Mohawk & Athens Generating Company Cost Reimbursement Agreement 1823 to be effective 11/18/2011.
Filed Date: 12/13/11.
Accession Number: 20111213–5031.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: ER12–599–000.
Applicants: Avista Corporation.
Description: Service Agreement No. T1108—Construction Agreement to be effective 12/13/2011.
Filed Date: 12/13/11.
Accession Number: 20111213–5134.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: ER12–600–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: DPC–ATC T–T to be effective 12/14/2011.
Filed Date: 12/13/11.
Accession Number: 20111213–5148.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: ER12–601–000.
Applicants: PPL Montour, LLC.
Description: Certificate of Concurrence relating to the Keystone Generating Station to be effective 1/1/2012.
Filed Date: 12/13/11.
Accession Number: 20111213–5168.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: ER12–602–000.
Applicants: PPL Montour, LLC.
Description: Certificate of Concurrence relating to the Conemaugh Generating Station to be effective 1/1/2012.
Filed Date: 12/13/11.
Accession Number: 20111213–5169.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: ER12–603–000.
Applicants: Avista Corporation.
Description: Cancellation of Rate Schedule No. 527 (RPSA) to be effective 10/1/2011.
Filed Date: 12/14/11.
Accession Number: 20111214–5000.
Comments Due: 5 p.m. ET 1/4/12.

Docket Numbers: ER12–604–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Amendment to IFA and Service Agreement with Wintec Energy Ltd. to be effective 12/15/2011.
Filed Date: 12/14/11.
Accession Number: 20111214–5101.
Comments Due: 5 p.m. ET 1/4/12.

Docket Numbers: ER12–605–000.
Applicants: Power Network New Mexico, LLC.
Description: Power Network New Mexico, LLC submits tariff filing per 35.12: Power Network New Mexico MBRA Application to be effective 3/1/2012.
Filed Date: 12/14/11.
Accession Number: 20111214–5124.
Comments Due: 5 p.m. ET 1/4/12.

Docket Numbers: ER12–606–000.
Applicants: UGI Development Company.
Description: UGI Development Company submits tariff filing per 35.13(a)(2)(iii: UGI Development Company—Certificate of Concurrence to be effective 1/1/2012.
Filed Date: 12/14/11.
Accession Number: 20111214–5129.
Comments Due: 5 p.m. ET 1/4/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–32884 Filed 12–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–233–000
Applicants: CenterPoint Energy Gas Transmission Company, LLC
Description: CEGTLLC—Discount Type Adjustment for Negotiated Rate Agreements to be effective 1/12/2012.
Filed Date: 12/12/11
Accession Number: 20111212–5111
Comments Due: 5 p.m. ET 12/27/11

Docket Numbers: RP12–234–000
Applicants: Transwestern Pipeline Company, LLC
Description: 2011 TW S&A Compliance Filing RP11–2576 to be effective 1/12/2012.
Filed Date: 12/12/11
Accession Number: 20111212–5165
Comments Due: 5 p.m. ET 12/27/11

Docket Numbers: RP12–235–000
Applicants: Gas Transmission Northwest LLC
Description: Reservation Charge Credit RP12–15 to be effective 1/12/2012.
Filed Date: 12/12/11
Accession Number: 20111212–5185
Comments Due: 5 p.m. ET 12/27/11

Docket Numbers: RP12–236–000
Applicants: Tuscarora Gas Transmission Company
Description: ACA Correction RP11–2435 to be effective 10/1/2011.
Filed Date: 12/13/11
Accession Number: 20111213–5120
Comments Due: 5 p.m. ET 12/27/11

Docket Numbers: RP12–237–000
Applicants: UGI LNG Inc.
Description: UGI LNG Tariff Filing to be effective 1/12/2012.
Filed Date: 12/13/11
Accession Number: 20111213–5167
Comments Due: 5 p.m. ET 12/27/11

Docket Numbers: RP12–238–000
Applicants: Gas Transmission Northwest LLC
Description: Gas Transmission Northwest LLC submits tariff filing per 154.203: Stipulation and Agreement RP11–2377 to be effective 1/1/2012.
Filed Date: 12/14/11
Accession Number: 20111214–5034
Comments Due: 5 p.m. ET 12/27/11

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1566–008
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Scheduling Priorities Refiling & Associate w/RP11–1566–004 to be effective 2/1/2012.
Filed Date: 12/12/11
Accession Number: 20111212–5172
Comments Due: 5 p.m. ET 12/27/11

Docket Numbers: RP11–2417–001
Applicants: ANR Storage Company
Description: RP11–2417 Volume 2 Baseline Compliance to be effective 8/24/2011.
Filed Date: 12/12/11
Accession Number: 20111212–5189
Comments Due: 5 p.m. ET 12/27/11

Docket Numbers: RP12–15–002
Applicants: Gas Transmission Northwest LLC
Description: Pressure Commitments Compliance RP12–15 to be effective 11/11/2011.
Filed Date: 12/12/11
Accession Number: 20111212–5176
Comments Due: 5 p.m. ET 12/27/11

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2011–32885 Filed 12–22–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0222; FRL–9508–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Petroleum Refineries (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 23, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0222, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2822IT, 1200 Pennsylvania Avenue NW., Washington,

DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0222, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Petroleum Refineries (Renewal).

ICR Numbers: EPA ICR Number 1054.11, OMB Control Number 2060–0022.

ICR Status: This ICR is scheduled to expire on December 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for Petroleum Refineries were promulgated on March 8, 1974, and amended on October 2, 1990. These regulations apply to the following affected facilities in petroleum refineries: Fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and Claus sulfur recovery plants of more than 20 long tons per day commencing construction, modification, or reconstruction after the date of proposal.

Owners or operators of subpart J facilities are required to comply with reporting and recordkeeping requirements, and maintain records of specific information needed by EPA to determine if compliance has been achieved. Sources are required to submit semiannual reports of excess emissions. These notifications, reports, and records are essential in determining compliance; and, in general, are required of all sources subject to NSPS.

Affected sources are required to complete initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance; and, in general, are required of all sources subject to NSPS.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart J, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 53 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Petroleum refineries.

Estimated Number of Respondents: 150.

Frequency of Response: Occasionally, initially, and semiannually.

Estimated Total Annual Hour Burden: 15,784.

Estimated Total Annual Cost: $2,229,986, which includes $1,510,886 in labor costs, no capital/startup costs, and $719,100 in operation and maintenance (O&M) costs.

Changes in the Estimates: The adjustment increase in burden from the most recently approved ICR is due to a more accurate estimate of existing sources. Consultations with the Office of Air Quality Planning and Standards (OAQPS) and trade associations reveal that there are approximately 150 sources subject to the rule, as compared with the active ICR that shows 132 sources. There are no new facilities expected to be constructed over the next three years of this ICR. There is also an increase in the estimated burden cost as currently

identified in the OMB Inventory of approved Burdens. The increase is not due to any program changes. The change in burden cost is due to the use of the most updated labor rates.

Because there are no new sources with reporting requirements, no capital/startup costs are incurred. The only cost that is incurred is for the O&M of the monitoring equipment.

Dated: December 16, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–32951 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0150; FRL–9508–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Establishing No-Discharge Zones Under Clean Water Act (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 23, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OWA–2008–0150, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Environmental Protection Agency, Mail code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Chris Laabs, Oceans and Coastal Protection Division, (4504T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–1223; fax number: (202) 566–1516; email address: *laabs.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 29, 2011 (76 FR 45553), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2008–0150, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Establishing No-Discharge Zones Under Clean Water Act § 312 (Renewal).

ICR numbers: EPA ICR No. 1791.06, OMB Control No. 2040–0187.

ICR Status: This ICR is scheduled to expire on December 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: (A) Sewage No-discharge Zones: The need for EPA to obtain information for the establishment of no-discharge zones (NDZs) for vessel sewage in State waters stems from CWA §§ 312(f)(3), (f)(4)(A), and (f)(4)(B), and subsequent regulations at 40 CFR 140.4(a–c). No-discharge zones are established to provide State and local governments with additional protection of waters from treated or untreated vessel sewage. There are three ways in which NDZs for vessel sewage can be established. This ICR discusses the information requirements associated with the establishment of NDZs for vessel sewage. The responses to this collection of information are required to obtain the benefit of a sewage NDZ (see 33 U.S.C. 1322). The information collection activities discussed in this ICR do not require the submission of any confidential information.

(B) UNDS No-discharge Zones: Under section 312(n) of the Clean Water Act (''Uniform National Discharge Standards for Vessels of the Armed Forces'' or ''UNDS'') no-discharge zones (''NDZs'') for discharges from Armed Forces vessels may be established by either State prohibition or EPA prohibition following the procedures in 40 CFR Part 1700. UNDS also provides that the Governor of any State may petition EPA and the Secretary of Defense to review any determination or standard promulgated under the UNDS program if there is significant new information that could reasonably result in a change to the determination or standard. This ICR discusses the information that will be required from a State if it decides to establish a NDZ by State prohibition or apply for a NDZ by EPA prohibition, and the information that will be required from a State if it decides to submit a petition for review. The responses to this collection of information are required to obtain the benefit of an UNDS NDZ or a review of an UNDS determination or standard (see 33 U.S.C. 1322(n)). The information collection activities discussed in this ICR do not require the submission of any confidential information.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is

estimated to average 142 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States.

Estimated Number of Respondents: 16.

Frequency of Response: Annual, on occasion.

Estimated Total Annual Hour Burden: 2,266 hours.

Estimated Total Annual Cost: $108,622 includes $2,300 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 59 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to revised estimates based on comments from independent state reviewers (respondents) who applied for NDZs over the last several years.

Dated: December 16, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–32956 Filed 12–22–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0719, FRL 9508–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Pretreatment Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 23, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2008–0719, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov.* (Identify Docket ID No. EPA–HQ–OW–2008–0719 in the subject line), or by mail to: Water Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460 and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Amelia Letnes, State and Regional Branch, Water Permits Division, OWM Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–5627; fax number: (202) 564–9544; email address: *letnes.amelia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 25, 2011 (76 FR 53123), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2008–0719, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: National Pretreatment Program (Renewal).

ICR numbers: EPA ICR Number 0002.15, OMB Control Number 2040–0009.

ICR Status: This ICR is scheduled to expire on 12/31/2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR calculates the burden and costs associated with managing and implementing the National Pretreatment Program as mandated under CWA sections 402(a) and 402(b) and 307(b). This ICR includes all existing tasks under the National Pretreatment Program, as amended by the EPA's Streamlining Rule.

EPA's Office of Wastewater Management (OWM) in the Office of Water (OW) is responsible for the management of the pretreatment program. The CWA requires EPA to develop national pretreatment standards to control discharges from Industrial Users (IUs) into Publicly-Owned Treatment Works (POTWs). These standards limit the level of certain pollutants allowed in non-domestic wastewater that is discharged to a POTW. EPA administers the pretreatment program through the NPDES permit program. Under the NPDES permit program, EPA may approve State or individual POTW implementation of the pretreatment standards at their respective levels. Data

collected from IUs during implementation of the pretreatment program include the mass, frequency, and content of IU discharges and IU schedules for installing pretreatment equipment. Data also include actual or anticipated IU discharges of wastes that violate pretreatment standards, have the potential to cause problems at the POTW, or are considered hazardous under the Resource Conservation and Recovery Act (RCRA). OWM uses the data collected under the pretreatment program to monitor and enforce compliance with the pretreatment regulations, as well as to authorize program administration at the State or Local (POTW) level. States and POTWs applying for approval of their pretreatment programs submit data concerning their legal, procedural, and administrative bases for establishing such programs. This information may include surveys of IUs, local limits for pollutant concentrations, and schedules for completion of major project requirements. IUs and POTWs submit written reports to the approved State or EPA. These data may then be entered into the NPDES databases by the approved State or by EPA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 74.0 hours per respondent per year, or 18.35 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Affected entities: Various industrial categories, publicly owned treatment works (POTWs), Local and State governments.

Estimated total number of potential respondents: 24,411 (36 States, 1,548 POTWs and 22,827 industrial users).

Frequency of response: On occasion, semi-annually, annually.

Estimated total average number of responses for each respondent: 4.

Estimated total annual burden hours: 1,806,517 hours.

Estimated total annual costs: $77,647,536. This includes an estimated burden cost of $75,328,623 and an estimated cost of $2,318,913 for capital investment or maintenance and operational costs.

Change in Burden: There is an increase of 9,430 (0.5%) hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. Most of the increase in burden is attributable to the transfer of the burden associated with Pretreatment Compliance Inspection (PCI) from the NPDES Program ICR (OMB Control No. 2040–0004, EPA ICR No. 0229.20). There are also additional burden increases in other areas. For example, the number of state respondents has increased from 35 to 36, and the number of approved programs has increased to 1,548 from 1,512.

However, the increases in burden are partially offset by a decrease in burden attributable to the decrease in the number of SIUs. EPA revised the estimated number of SIUs and pretreatment programs after extensive consultation with the EPA regions and a thorough examination of PCS data. The revised number of SIUs drives the decrease in respondent burden because SIUs constitute the bulk of respondents. This ICR shows a shift in burden from POTWs to States as a consequence of EPA's updated estimates of SIUs regulated by POTWs and States. However, this is not the result of programmatic changes but simply a reflection of more accurate information about the implementation of the pretreatment program.

Dated: December 16, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–32961 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1121; FRL–9509–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Fuel Quality Regulations for Diesel Fuel Sold in 2001 & Later Years; for Tax-Exempt (Dyed) Highway Diesel Fuel; & Non-Road Locomotive & Marine Diesel Fuel (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before *January 23, 2012.*

ADDRESSES: Submit comments referencing Docket ID No. EPA–HQ–OAR–2007–1121, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air Docket, Mail Code 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Environmental Protection Specialist, Mail Code: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9017 fax number: (202) 343–2801; email address: *heard.geanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 18, 2011 (76 FR 51362), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–1121, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and

to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information for which public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Fuel Quality Regulations for Diesel Fuel Sold in 2001 & Later Years; for Tax-Exempt (Dyed) Highway Diesel Fuel; & Non-Road Locomotive & Marine Diesel Fuel (Renewal).

ICR numbers: EPA ICR No. 1718.09, OMB Control No. 2060–0308.

ICR Status: This ICR is currently scheduled to expire on December 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers recordkeeping and reporting requirements for motor vehicle diesel fuel and non-road, locomotive and marine diesel fuel. It also includes recordkeeping and reporting associated with the placement of codes on dyed diesel fuel (the dye is required under IRS regulations). The main purpose for recordkeeping and reporting is to ensure compliance with the regulations at 40 CFR Part 80, Subpart I—''Motor Vehicle, Non-Road, Locomotive, and Marine Diesel Fuel.'' Most reporting is mandatory. Parties may assert a claim of business confidentiality and submissions covered by such a claim will be treated in accordance with procedures at 40 CFR part 2 and established Agency procedures.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .07 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Private businesses selling diesel fuel.

Estimated Number of Respondents: 6,806.

Frequency of Response: Annual, quarterly and/or on occasion..

Estimated Total Annual Hour Burden: 18,950.

Estimated Total Annual Cost: $2,084,500.

Changes in the Estimates: There is a decrease of hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. For this renewal, we estimate a total annual burden of 18,950 hours. This represents a decrease of 266,311 hours. For the expiring approval, we had estimated 285,261 hours. Most motor vehicle diesel reporting has now ended, which was expected to reduce the responses, hours, and costs. Likewise, laboratory qualifications have virtually all been submitted already. However, please note that we have changed how we accounted for the burden for this renewal. We have modeled our estimates to match the in-use forms in order to assist interested parties in providing comments. Therefore, some of the change is associated with how we did the estimates in 2008 (expiring approval) and now.

Dated: December 16, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–32960 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0719, FRL 9508–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Cooling Water Intake Structures New Facility (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 23, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2008–0719, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov* (Identify Docket ID No. EPA–HQ–OW–2008–0719 in the subject line), or by mail to: Water Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460 and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Amelia Letnes, State and Regional Branch, Water Permits Division, OWM Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–5627; fax number: (202) 564 9544; email address: *letnes.amelia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 25, 2011 (76 FR 53123), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2008–0719, which is available for online viewing at

www.regulations.gov, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at www.regulations.gov as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Cooling Water Intake Structures New Facility (Renewal).

ICR numbers: EPA ICR No. 1973.05, OMB Control No. 2040–0241.

ICR Status: This ICR is scheduled to expire on 12/31/2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The section 316(b) New Facility Rule requires the collection of information from new facilities that use a CWIS and meet the other eligibility requirements. Section 316(b) of the CWA requires that any standard established under section 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction and capacity of CWISs at that facility reflect the best technology available (BTA) for minimizing adverse environmental impact. See 66 FR 65256. Such impact occurs as a result of impingement (where fish and other aquatic life are trapped on technologies at the entrance to cooling water intake structures) and entrainment (where aquatic organisms, eggs, and larvae are taken into the cooling system, passed through the heat exchanger, and then pumped back out with the discharge from the facility). The rule establishes standard requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. These requirements seek to minimize the adverse environmental impact associated with the use of CWISs.

Burden Statement: The annual average reporting and record keeping burden is estimated to be 1,620 hours per respondent for permitted facilities and 154 hours per respondent for States. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Affected entities: New NPDES-permitted facilities that use a cooling water intake structure (CWIS), mostly power producing facilities and manufacturing facilities.

Estimated total number of potential respondents: 86 facilities and 47 States and Territories.

Frequency of response: Annual, every 5 years.

Estimated total average number of responses for each respondent: 5.8 for facilities (467 annual average responses for 81 average facility respondents) and 8.9 for States and Territories (420 annual average responses for 47 average State respondents).

Estimated total annual burden hours: 138,421 (131,188 for facilities and 7,233 for States and Territories).

Estimated total annual costs: $10.6 million per year. This includes an estimated burden cost of $8.1 and an estimated cost of $2.5 for capital investment or maintenance and operational costs.

Change in Burden: There is an increase of 20,212 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase is due to the addition of the newly built facilities, as well as the continued performance of annual activities by facilities that received their permit during the previous ICR approval periods. In addition, this ICR includes additional repermitting burden and costs because more facilities are entering the renewal phase of their permits.

Dated: December 16, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–32953 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0219; FRL–9508–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Primary and Secondary Emissions From Basic Oxygen Furnaces (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 23, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0219, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2822IT, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs,

Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0219, which is available for either public viewing online at *http://www.regulations.gov* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Primary and Secondary Emissions from Basic Oxygen Furnaces (Renewal).

ICR Numbers: EPA ICR Number 1069.10, OMB Control Number 2060–0029.

ICR Status: This ICR is scheduled to expire on December 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for Primary and Secondary Emissions from Basic Oxygen Furnaces (40 CFR part 60, subparts N and Na) were promulgated on July 25, 1977 and January 2, 1986, respectively, and amended on October 17, 2000. These rules apply to Basic Oxygen Process Furnaces (BOPFs) in iron and steel plants commencing construction, modification or reconstruction after June 11, 1973 (NSPS subpart N) and top-blown BOPFs, hot metal transfer stations or skimming stations for which construction, reconstruction, or modification commenced after January 20, 1983 (NSPS subpart Na).

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum. These notifications, reports, and records are essential in determining compliance; and, in general, are required of all sources subject to NSPS.

Notifications are to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to ensure that the pollution control devices are properly installed and operating and that the standards are being met. Performance test reports are required as these are the Agency's records of a sources' initial capability to comply with the emission standards and to serve as a record of the operating conditions under which compliance are to be achieved. The information generated by monitoring, recordkeeping, and reporting requirements described in this ICR are used by the Agency to ensure that facilities that are affected by the standard continue to operate the control equipment and achieve continuous compliance with the regulation.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart H, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 174 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Primary and secondary emissions from basic oxygen furnaces.

Estimated Number of Respondents: 18.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 6,263.

Estimated Total Annual Cost: $629,183, which includes $599,483 in labor costs, no capital/startup costs, and $29,700 in operation and maintenance (O&M) costs.

Changes in the Estimates: The adjustment increase in burden from the most recently approved ICR is due to a more accurate estimate of existing sources. Consultations with the Office of Air Quality Planning and Standards (OAQPS) and trade associations revealed that there are approximately eighteen sources subject to the rule, as compared with the active ICR that shows five sources. There are no new facilities expected to be constructed over the next three years of this ICR. There is also an increase in the estimated burden cost as currently identified in the OMB Inventory of approved Burdens. The increase is not

due to any program changes. The change in burden cost is due to the use of the most updated labor rates.

Because there are no new sources with reporting requirements, no capital/startup costs are incurred. The only cost that is incurred is for the O&M of the monitoring equipment.

Dated: December 16, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–32949 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9610–6]

Clean Water Act Section 303(d): Availability of One Total Maximum Daily Load (TMDL) in Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment on the administrative record files and the calculations of one TMDL prepared by EPA Region 6. This notice covers waters in the State of Louisiana's Lake Pontchartrain Basin that were identified as impaired on the State's Section 303(d) list. This TMDL was completed in response to a court order in the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.,* No. 96–0527, (E.D. La.).

DATES: Comments must be submitted in writing to EPA on or before February 6, 2012.

ADDRESSES: Comments on the one TMDL should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733 or email: *smith.diane@epa.gov.* For further information, contact Diane Smith at (214) 665–2145 or fax 214.665.7373. The administrative record file for the one TMDL is available for public inspection at this address as well. Documents from the administrative record files may be viewed at *http://www.epa.gov/earth1r6/6wq/npdes/tmdl/index.htm,* or obtained by calling or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford, et al.,* No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that the EPA failed to establish Louisiana TMDLs in a timely manner. The EPA proposes this one TMDL pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comment on One TMDL

By this notice the EPA is seeking comment on the following one TMDL for waters located within Louisiana:

Subsegment	Waterbody name	Pollutant
041401	New Orleans East Leveed Waterbodies (Estuarine).	Dissolved oxygen.

The EPA requests the public provide to the EPA any water quality related data and information that may be relevant to the calculations for the one TMDL. The EPA will review all data and information submitted during the public comment period and will revise the TMDL where appropriate. The EPA will then forward the TMDL to the Louisiana Department of Environmental Quality (LDEQ). The LDEQ will incorporate the TMDL into its current water quality management plan.

Dated: December 14, 2011.

William K. Honker,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 2011–33005 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0782; ER–FRL–9000–7]

Availability of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Environmental Assessment (EA)/Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4307h), the Council on Environmental Quality's NEPA regulations (40 CFR Part 1500–1508), and EPA's regulations for implementing NEPA (40 CFR Part 6), EPA has prepared an Environmental Assessment (EA) to analyze the potential environmental impacts related to the reissuance of the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Construction Activities (2012 Construction General Permit). The EA evaluates the potential environmental impacts from the discharge of pollutants associated with stormwater runoff from construction activities greater than one acre, where EPA is the permitting authority. Based on the environmental impact analysis in the EA, EPA has made a preliminary determination that no significant environmental impacts are anticipated from the issuance of the 2012 Construction General Permit.

This notice initiates the 30-day review period and invites comments from Federal, State, and local agencies, Indian tribes, and the public regarding EPA's preliminary determination.

DATES: Comments must be received by January 23, 2012.

ADDRESSES: You may submit comments to the Docket ID No. EPA–HQ–OW–2010–0782 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments by clicking on ''Help'' or ''FAQs.''
- *Mail: Attn:* CGP Comments, U.S. Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Avenue NW., Mail Code: 4203 M, Washington, DC 20460.
- *Courier: Attn:* CGP Comments, U.S. Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Avenue NW., Rm # 7241C, Washington, DC 20004, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Comments should be received within 30 days of the date of the publication of this notice in the **Federal Register**. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov.* The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM

you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Jessica Trice, NEPA Compliance Division, Office of Federal Activities, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code: 2252A, Washington, DC 20460. Telephone: (202) 564–6646.

SUPPLEMENTARY INFORMATION: EPA is seeking public comment regarding its preliminary Finding of No Significant Impact (FONSI) to document its determination that no significant environmental impacts are anticipated from the issuance of the 2012 Construction General Permit. EPA invites the public to submit comments through Regulations.gov or by mail to the address cited in the **ADDRESSES** section during the 30-day comment period following the publication of this notice in the **Federal Register**.

Since 1992, EPA has issued a series of NPDES Construction General Permits (CGP) that cover areas where EPA is the permitting authority. At present, EPA is the permitting authority in four states (Idaho, Massachusetts, New Hampshire, and New Mexico), the District of Columbia, Puerto Rico, all U.S. territories with the exception of the Virgin Islands, federal facilities in four states (Colorado, Delaware, Vermont, and Washington), most Indian lands and other specifically designated activities in specific states (e.g., oil and gas activities in Texas and Oklahoma). EPA's current CGP became effective on June 30, 2008 (see 74 FR 40338) and will expire on February 15, 2012. The proposed action, would replace the 2008 CGP, as well as the 2003 CGP for construction sites still covered under that administratively continued permit. EPA proposes to issue the construction general permit for five (5) years, and to provide permit coverage to eligible existing and new construction projects in all areas of the country where EPA is the NPDES permitting authority. On April 25, 2011, EPA proposed for public comment the draft National Pollutant Discharge Elimination System general permit for stormwater discharges from large and small construction activities and initiated scoping for the development of the environmental issues and reasonable alternatives to be addressed in the EA. 76 FR 22882.

The environmental review process, which is documented by the Environmental Assessment (EA), indicates that no potential significant adverse environmental impacts are anticipated from the proposed action. The EA, which analyzed the potential environmental impacts of issuing the new CGP, considered the potential environmental impacts from the discharge of pollutants in stormwater discharges associated with construction activity where EPA is the permitting authority.

Based on the environmental impact analysis in the EA, EPA has determined that no significant environmental impacts are anticipated from the issuance of the 2012 Construction General Permit and the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, making the preparation of an Environmental Impact Statement (EIS) unnecessary. Therefore, EPA is issuing a preliminary Finding of No Significant Impact (FONSI).

Dated: December 20, 2011.

Aimee S. Hessert,

Deputy Division Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–32945 Filed 12–22–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9000–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 12/12/2011 Through 12/16/2011 Pursuant to 40 CFR 1506.9

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20110423, Draft EIS, NRC, SC, William States Lee III Nuclear Station Units 1 and 2 Combined Licenses (COLs) Application, Constructing and Operating Two New Nuclear Units at the Lee Nuclear Station Site, NUREG–2111, Cherokee County, SC, Comment Period Ends: 02/06/2012, Contact: Sarah Lopas (301) 415–1147.

EIS No. 20110424, Final EIS, NOAA, IL, Illinois Coastal Management Program, To Preserve, Protect, Restore, and Where Possible, Enhance Coastal Resources in Illinois, Review Period Ends: 01/23/2012, Contact: Diana Olinger (301) 563–1149.

EIS No. 20110425, Final EIS, FHWA, CT, North Hillside Road Extension on the University of Connecticut Storrs Campus, Hunting Lodge Road, US Army COE Section 404 Permit, in the town Mansfield, CT, Review Period Ends: 01/23/2012, Contact: Amy Jackson-Grove (860) 659–6703 Ext. 3009.

EIS No. 20110426, Draft EIS, USFS, FL, City of Tallahassee Southwestern Transmission Line Project, Proposes to Construct, Operate and Maintain a New Overhead 230- kilovolt (kV), Electric Transmission Line, Special-Use-Permit (SUP), Apalachicola National Forest (ANF), Leon County, FL, Comment Period Ends: 02/06/2012, Contact: David Harris (404) 347–5292.

EIS No. 20110427, Final EIS, AFS/BLM, UT, Greens Hollow Coal Lease Tract Project, Proposed Federal Coal Leasing and Subsequent Underground Coal Mining, Funding and Lease Application, Fishlake and Manti-La Sal National Forest, Sanpete and Sevier Counties, UT, Review Period Ends: 01/23/2012, Contact: Tom Lloyd (435) 636–3596 (AFS) and Steve Rigby (435) 636–3604 (BLM). This is a Joint Lead document between AFS and BLM.

EIS No. 20110428, Draft EIS, USACE, CA, Berths 302–306 American Presidents Line (APL) Container Terminal Project, Construction and Operation, US Army COE Section 10 and Section 103 of the Marine Protection Research and Sanctuaries Act, Los Angeles County, CA, Comment Period Ends: 02/17/2012, Contact: Theresa Stevens (805) 585–2146.

EIS No. 20110429, Draft EIS, FTA, NJ, Northern Branch Corridor Project, Restoration of Passenger Rail Service in Northeastern Hudson and Southern Bergen Counties, NJ, Comment Period Ends: 02/06/2012, Contact: Anthony Lee (212) 668–2170.

Amended Notices

EIS No. 20110371, Draft EIS, BLM, UT, Alton Coal Tract Lease by Application Project, the Exploration and Development of Mineral Resource, Kane County, UT, Comment Period Ends: 01/27/2012, Contact: Keith Rigtrup (435) 865–3063 Revision to FR Notice Published 11/04/2011: Extending Comment Period from 01/06/2012 to 01/27/2012.

Dated: December 20, 2011.

Aimee S. Hessert,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–32944 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9610–8]

Notification of a Public Meeting of the Science Advisory Board Libby Amphibole Asbestos Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of an SAB Panel to review EPA's draft Toxicological Review of Libby Amphibole Asbestos (August 2011).

DATES: The meeting will be held on February 6, 2012 from 9 a.m. to 5:30 p.m., February 7, 2012 from 8:30 a.m. to 5:30 p.m. and on February 8, 2012 from 8:30 a.m. to 2:30 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the Westin Alexandria Hotel at 400 Courthouse Square, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this meeting may contact Dr. Diana Wong, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2049 or via email at *wong.diana-M@epa.gov.* General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. Pursuant to FACA and EPA policy, notice is hereby given that an SAB Panel will hold a public meeting to review EPA's draft Toxicological Review of Libby Amphibole Asbestos (August 2011). The SAB panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The EPA's National Center for Environmental Assessment (NCEA) within the Office of Research and Development (ORD) has requested SAB to review EPA's Draft Toxicological Review of Libby Amphibole Asbestos in Support of Summary Information on the Integrated Risk Information System (IRIS) (August, 2011). The SAB Staff Office previously requested public nominations of experts to serve on a SAB review panel on May 27, 2011 (76 FR 30939–30940). Information about the formation of the Libby Amphibole Asbestos Review Panel can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Libby%20Cancer%20Assessment?OpenDocument.*

Availability of the review materials: The agenda and materials in support of this meeting will be available at the URL above. For technical questions and information concerning EPA's review document, please contact Dr. Danielle DeVoney, of EPA's National Center for Environmental Assessment (NCEA), by phone (703) 347–8558, or via email at *devoney.daniel@epa.gov;* or Dr. Bob Benson, of EPA Region 8, by phone (303) 312–7070, or via email at *benson.bob@epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments pertaining EPA's charge or meeting materials. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB panel to consider or if it relates to the clarity or accuracy of the technical information.

Members of the public wishing to provide comment should contact the Designated Federal Officer for the relevant advisory committee directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation at this public meeting will be limited to five minutes per speaker. Interested parties should contact Dr. Diana Wong, DFO, in writing (preferably via email), at the contact information noted above, by January 27, 2012 to be placed on the list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by January 27, 2012 so that the information may be made available to the SAB Panel for their consideration. Written statements should be supplied to the DFO in electronic format via email (acceptable file formats: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Diana Wong at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 16, 2011.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–33000 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9610–7]

Notification of Teleconferences of the Science Advisory Board Biogenic Carbon Emissions Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces two teleconferences of the SAB Biogenic Carbon Emissions Panel to review EPA's draft *Accounting Framework for Biogenic CO^2 Emissions from Stationary Sources* (September 2011).

DATES: The teleconferences will be held on January 27, 2012 from 2 p.m. to 5

p.m. and March 20, 2012 from 1 p.m. to 4 p.m.

ADDRESSES: The teleconferences will take place by phone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding these teleconferences may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2073 or via email at *stallworth.holly@epa.gov.* General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *Background:* The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. Pursuant to FACA and EPA policy, notice is hereby given that the SAB Biogenic Carbon Emissions Panel will hold two public teleconferences to discuss draft responses to charge questions on EPA's draft *Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources* (September 2011). The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA's Office of Atmospheric Programs (OAP) in EPA's Office of Air and Radiation requested SAB review of the draft report and accounting framework. As noticed in 76 FR 61100–61101, the SAB Biogenic Carbon Emissions Panel held a public meeting on October 25–27, 2011, to review and discuss its advice on EPA's draft *Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources* (September 2011). The panel will discuss its draft report during the teleconferences to be held on January 27, 2012 and March 20, 2012.

Availability of the meeting materials: An agenda and draft responses to charge questions will be posted on the SAB Web site (*http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Accounting%20for%20biogenic%20CO2?OpenDocument*) prior to each teleconference. EPA's review document, charge to the Panel and other background materials are also available at the URL above. For questions concerning EPA's draft *Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources* (September 2011), please contact Dr. Jennifer Jenkins, Climate Change Division, at *jenkins.jennifer@epa.gov* or (202) 343–9361 or Sara Ohrel at *ohrel.sara@epa.gov* or (202) 343–9712.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments for a federal advisory committee to consider pertaining to charge to the panel, EPA review documents, or this advisory activity. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB panel to consider or if it relates to the clarity or accuracy of the technical information.

Oral Statements: In general, individuals or groups requesting an oral presentation at these teleconferences will be limited to three minutes per speaker. Interested parties should contact Dr. Holly Stallworth, DFO, in writing (preferably via email), at the contact information noted above, by January 25, 2012 to be placed on the list of public speakers for the January 27, 2012 teleconference and by March 16, 2012 to be placed on the list of speakers for the March 20, 2012 teleconference.

Written Statements: Written statements should be received in the SAB Staff Office by January 25, 2012 to be considered for the January 27, 2012 teleconference and by March 16, 2012 to be considered for the March 20, 2012 teleconference. Written statements should be supplied to the DFO in electronic format via email (acceptable file formats: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Holly Stallworth at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 16, 2011.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–33003 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9609–6]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Sussex County, DE

SUMMARY: The EPA is hereby granting a waiver of the Buy American Requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to Sussex County, DE (''County''), for the purchase of one ductless split heating/air conditioning (HVAC) system, manufactured in Japan by Fujitsu General American, Inc. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The County evaluated two different manufacturers of the specified ductless split air conditioning and heat pump systems. The ARRA funded project is for construction of the Town of Millsboro, Oak Orchard Sanitary Sewer District Expansion Area 1, Pump Station No. 326 with a ductless split HVAC system. Based upon information submitted by the County and its consulting engineer, EPA has concluded that there are no HVAC systems manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the technical specifications and that a waiver of the Buy American provisions is justified. The Regional Administrator is making

this determination based on the review and recommendations of the EPA Region III, Water Protection Division, Office of Infrastructure and Assistance.

The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to the requirements of Section 1605(a) of ARRA. This action permits the purchase of a ductless split HVAC system for the proposed project being implemented by Sussex County.

DATES: *Effective Date:* December 23, 2011.

FOR FURTHER INFORMATION CONTACT: Robert Chominski, Deputy Associate Director, (215) 814–2162, or David McAdams, Environmental Engineer, (215) 814–5764, Office of Infrastructure & Assistance (OIA), Water Protection Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to Sussex County, Delaware for the purchase of one ductless split heating/air conditioning system (HVAC) for Pump Station No. 326. EPA has evaluated the County's basis for procuring the HVAC system for the pump station. The ARRA funded project is for a pump station (PS No. 326) with a HVAC system. The construction of the pump station number 326 includes a heat pump system for the electrical room. The system includes an indoor wall mounted evaporator-fan unit and an outdoor aired cooled compressor-condenser. The new HVAC split system will provide benefits to the County due to the product's reliability with the electronics controlling critical infrastructure, cost effectiveness, energy efficiency, and ease of maintenance. The HVAC system is specifically designed for this project to provide heat and cooling in the pump station's electrical room. Based upon information submitted by the County and its consulting engineer, EPA has concluded that there are no HVAC systems manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the technical specifications for the County to pursue the purchase of domestically manufactured HVAC systems.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

EPA has also evaluated the County's request to determine if its submission is considered late or if it could be considered as if it was timely filed, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as ''late'' if submitted after the contract date. However EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB guidance, which says ''the award official may deny the request''. For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet the County's project specifications for the HVAC system. The waiver request was submitted after the contract date because the County was not notified that a Buy American waiver was needed, and that there are no American manufacturers of the HVAC system that could meet the project specifications, until their contractor submitted their shop drawings on August 1, 2011. Therefore, the County did not submit a waiver request until September 22, 2011. There is no indication that the County failed to request a waiver to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products that meet the project specifications. EPA will consider the County's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by the County and no loss by the government due to the late request.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the ''American Recovery and Reinvestment Act of 2009'', defines reasonably available quantity as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' The County has provided information to the EPA representing that there are currently no domestic manufacturers of the HVAC systems that meet the project specification requirements. Based on additional research by EPA's consulting contractor and to the best of the Region's knowledge at this time, there does not appear to be any other manufacturer capable of meeting the County's specifications.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring utilities, such as the County, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs. The OIA has reviewed this waiver request and to the best of our knowledge at the time of review has determined that the supporting documentation provided by the County is sufficient to meet the criteria listed under Section 1605(b) and in the April 28, 2009, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum:'' Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality to meet the County's technical specifications, a waiver from

the Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, Sussex County is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of a ductless split HVAC system using ARRA funds as specified in Sussex County's request of September 22, 2011. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Public Law 111–5, section 1605.

Issued on: December 13, 2011.

James W. Newsom,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2011–33015 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later January 6, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Mark W. Jaindl, Allentown, Pennsylvania; to acquire voting shares of South Street Financial Corp., and thereby indirectly acquire Home Savings Bank of Albermarle, INC., SSB, both in Albermarle, North Carolina.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Meredith Williams, Omaha, Nebraska; Luke and Julie Rickertsen, Gothenburg, Nebraska; Matthew H. Williams Family Irrevocable Trust #1; and Matthew H. Williams Family Irrevocable Trust #2; to become part of the family group acting in concert; and Robert M. Williams, Omaha, Nebraska, individually and as Trustee of the Matthew H. Williams Family Irrevocable Trust #1; and Matthew H. Williams Family Irrevocable Trust #2; to acquire control of Williams Financial Corp., and thereby indirectly acquire The Gothenburg State Bank and Trust Company, both in Gothenburg, Nebraska.

December 19, 2011.

Board of Governors of the Federal Reserve System.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–32872 Filed 12–22–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Gerald Lushington, Ph.D., Kansas University: Based on an inquiry conducted and written admission obtained by Kansas University (KU) and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Gerald Lushington, Director of the K–INBRE [1] Bioinformatics Core Facility, KU, and Director of the Molecular Graphics and Modeling Lab, KU, engaged in research misconduct in research supported by National Center for Research Resources (NCRR), National Institutes of Health (NIH), grant P20 RR016475.

Specifically, ORI found that Respondent engaged in research misconduct by approving publication of three articles and one abstract he knew contained significant amounts of plagiarized text without attribution or citation from other writers' published papers. The specific published documents as well as the relevant source documents are:

- Visvanathan, M., Adagarla, B., Lushington, G., Sittampalam, S., *Proceedings of the 2009 International Joint Conference on Bioinformatics, Systems, Biology and Intelligent Computing,* 2009, 494–497. Greater than half (50%) of the total text was obtained from (1) Yang, C.-S., Chuang, L.-Y., Ke, C.-H., Yang, C.-H., *International Journal of Computer Science, International Association of Engineers,* August 2008 35(3),

(2) Goffard, N. and Weiller, G., *Nucleic Acids Research,* 2007, 35L:W176–W181, and (3) Chuang, L.-Y., Yang, C.-H., Tu, C.-J., Yang, C.-H., *Proceedings of the Joint Conference on Information Sciences,* Atlantis Press, October 2006.

Retracted: Retracted administratively by IEEE on Jan 5, 2011 *http://ieeexplore.ieee.org/xpl/freeabs_all.jsp?arnumber=5260432*

- Vijayan, A.; Skariah, B. E., Nair, B.; Lushington, G., Subramanian, S., Visvanathan, M., *Proceedings of the IEEE International Conference on Bioinformatics and Biomedicine Workshop,* 2009, BIBMW2009, 267–271. Approximately 15% of the text was plagiarized from Goffard, N. and Weiller, G., *Nucleic Acids Research,* 2007, 35L:W176–W181.

Retracted: Retracted administratively by IEEE on Jan 5, 2011 *http://www.computer.org/portal/web/csdl/doi/10.1109/BIBMW.2009.5332106*

- Visvanathan, M., Netzer, M., Seger, M., Adagarla, B. S., Baumgartner, C., Sittampalam, S., Lushington, G., *International Journal of Computational Biology and Drug Design,* 2009, 2,236–251. A complete paragraph of the text was plagiarized from Goffard, N. and Weiller, G., *Nucleic Acids Research,* 2007, 35L:W176–W181.
- Adagarla, B., Lushington, G., Visvanathan, M., ISMB International Conference, January 2009; the entire abstract for this poster was obtained by plagiarizing text from Pihur, V., Datta, S., Datta S., *Genomics,* 2003, 92:400-403.

Dr. Lushington has entered into a Voluntary Settlement Agreement (Agreement) and has voluntarily agreed for a period of two (2) years, beginning on December 6, 2011:

(1) To have any U.S. Public Health Service (PHS)-supported research supervised; ORI acknowledges that

[1] K–INBRE: The KansasIDeA Network of Biomedical Research Excellence, which is a consortium of a number of schools and centers in Kansas.

Respondent's research is currently being supervised by KU; Respondent shall ensure that a plan for supervision of his PHS-related duties is submitted to ORI for approval either within two weeks of this Agreement becoming final or prior to receiving or applying for PHS funds if such support is not current at the time this Agreement is completed; the supervision plan must be designed to ensure the scientific integrity of his research contribution; because of the ongoing review of Respondent's research by KU, ORI will only require a summary report on the first and second anniversary of the Agreement detailing how KU has ensured that Respondent's research and language in PHS grant applications and reports of PHS-supported research have been verified to be his own and accurately reported; Respondent agrees to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that this annual summary, provided by any institution employing him, shall provide assurance that each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent was involved, was based on actual experiments or was otherwise legitimately derived, that the data, procedures, and methodology were accurately reported in the application, report, manuscript, or abstract, and that the text in such submissions was his own or properly cited the source of copied language and ideas; and

(3) to exclude himself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2011–32914 Filed 12–22–11; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10368]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (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.

1. *Type of Information Collection Request:* New collection (request for a new OMB control number); *Title of Information Collection:* Dental Action Plan Template for Medicaid and CHIP Programs; *Use:* CMS is responsible for administering the Federal Medicaid program and the Children's Health Insurance Program (CHIP). As part of the Federal Medicaid program, CMS oversees the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit to assure that all requirements are met. The provision of dental services to EPSDT-eligible individuals is required under section 1905(r)(3) of the Social Security Act. In addition, section 1902(a)(43)(D)(iii) requires that CMS collect information on dental services furnished to eligible individuals. Section 501(e) of CHIPRA imposed new data reporting requirements for the CHIP program by requiring certain dental data to be reported in 2011 on the CHIP annual report. Dental data for CHIP is unavailable as the requirement to report this data is new for CHIP programs. CMS intends to use the information provided in the template to help inform us of the States' activities undertaken to achieve the national oral health goals for Medicaid and CHIP. CMS will use the information to routinely follow-up with States on the achievement of their goals and activities and will share that information with other States. The template has been revised since the publication of the 60-day notice by clarifying instructions and by making minor changes. The supporting documents have not been changed; *Form No.:* CMS–10368 (OCN 0938–NEW); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 69; *Total Annual Responses:* 69; *Total Annual Hours:* 4,485. (For policy questions regarding this collection contact Cindy Ruff at (410) 786–5916. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *January 23, 2012.* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, email: *OIRA_submission@omb.eop.gov.*

Dated: December 16, 2011.

Martique Jones,

Director, Regulations Development Group, Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–33098 Filed 12–22–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–1880 and CMS–1882]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services. HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid

Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Certification as a Supplier of Portable X-Ray and Portable X-Ray Survey Report Form and Supporting Regulations at 42 CFR Part 486.100–486.110; *Use:* CMS–1880 is utilized as an application to be completed by suppliers of portable X-ray services requesting participation in the Medicare program. This form initiates the process of obtaining a decision as to whether the conditions of coverage are met as a portable X-ray supplier. It also promotes data reduction or introduction to, and retrieval from, the Certification and Survey Provider Enhanced Reporting (CASPER) by the CMS Regional Offices (ROs).

CMS–1882 is used by the State survey agency to provide data collected during an on-site survey of a supplier of portable X-ray services to determine compliance with the applicable conditions of participation and to report this information to the Federal Government. The form is primarily a coding worksheet designed to facilitate data reduction and retrieval into the ASPEN system at the CMS ROs. The form includes basic information on compliance (i.e., met, not met, explanatory statements) and does not require any descriptive information regarding the survey activity itself. CMS has the responsibility and authority for certification decisions which are based on supplier compliance with the applicable conditions of participation. The information needed to make these decisions is available to CMS only through the use of information abstracted from the survey report form; *Form Numbers:* CMS–1880 (Request for Certification as a Supplier of Portable X-ray Services), CMS–1882 (Medicare/Medicaid Portable X-ray Survey Report), and OCN 0938–0027; *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 579; *Total Annual Responses:* 86; *Total Annual Hours:* 151. (For policy questions regarding this collection contact Georgia Johnson at (410) 786–6859. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by February 21, 2012:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 16, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–33101 Filed 12–22–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA)

AGENCY: Indian Health Service (IHS), HHS.

ACTION: Notice.

SUMMARY: The IHS is hereby granting waivers of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) [applying the Buy American provision would be inconsistent with the public interest] to the Alaska Native Tribal Health Consortium (ANTHC) for the specific Alaska projects listed in this notice for the purchase of a foreign manufactured equipment to be installed on those sanitation facilities construction projects. This is a project specific waiver and only applies to the use of the specified product for the ARRA projects listed in this notice. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. Based upon information submitted by the ANTHC professional engineering staff, it has been determined that applying the Buy American provision would be inconsistent with the public interest. The IHS is making this determination based on the review and recommendation of the IHS Alaska Area Office. This action permits the purchase of a foreign manufactured item for the projects specified in this notice.

Waivers are granted for the ARRA funded ANTHC projects in these Alaska communities: City of Angoon for water treatment plant media filters, City of Buckland for Flygt submersible wastewater pumps and appurtenances, City of Chignik for water treatment plant measuring equipment, City of Chuathbaluk for Grundfos pumps for its water and sewer systems, City of Deering for Grundfos pumps for its infiltration gallery and filtration plant, and City of Hooper Bay for Toyotomi Fuel Lift pumps for its existing Toyotomi fuel oil fired hotwater heaters.

DATES: *Effective Date:* Upon publication.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and Section 176.80 of the rules of the Office of Management and Budget (OMB) (2 CFR 176.80), the IHS hereby provides notice that it is granting a limited waiver of the requirements of section 1605(a) of Public Law 111–5, Buy American requirements, based on the public interest authority of section 1605(b)(1), to allow the use of non-domestic iron, steel, and manufactured goods in eligible sanitation facilities construction projects.

ARRA 1605(a) prohibits the use of Recovery Act funds for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is granted by the head of the Federal department or agency. ARRA 1605(b) provides that the Buy American requirement shall not apply in any case

or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality; or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. ARRA 1605(c) provides that if the head of a Federal department or agency makes a determination under 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**. The finding relevant to this waiver is at ARRA 1605(b)(1), that applying the Buy American requirement would be inconsistent with the public interest.

In drafting this waiver, IHS considered the fact that these types of components are used in State of Alaska and Environmental Protection Agency (EPA) funded projects as well as those funded by the IHS. The State's remote maintenance worker program, which provides technical assistance to village operators on the operation and maintenance of their systems, is dependent on the standardization of those items since almost all travel to assist Native village system operators must be accomplished on small single engine aircraft with limited cargo capacity. The disproportionate cost and delay that would be imposed on projects if the IHS did not issue this waiver would jeopardize project completion and related jobs in remote areas including Alaska villages where the only means of transporting such components is by air. In addition, the majority of Alaska sanitation facilities construction projects occur in remote locations, the summer construction season is very short, and water and wastewater systems and their component equipment must be reliable during the long Alaska winters with its sub-zero temperatures.

Based on the findings discussed above and pursuant to Section 1605(c), the IHS is hereby granting waivers to the ANTHC for the projects listed above. The IHS has determined that imposing the Buy American requirement for the items incorporated into the listed projects would be inconsistent with the public interest and particularly with ARRA's directives to ensure expeditious construction consistent with prudent management. Accordingly, IHS is hereby issuing waivers from the requirements of ARRA Section 1605(a) to ANTHC for the components described for the listed projects.

The ANTHC must retain relevant documentation as to these project items in their project files, including the types and/or categories of items to which this waiver is applied, the total cost of components covered by the waiver for each type or category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

The IHS has determined that the ANTHC's waiver request is late, but for the reasons set forth below the IHS will evaluate the request as if it were timely made even though the request was made after the project execution. Pursuant to the OMB guidance at 2 CFR 176.120, the IHS may determine that the ANTHC's request can be evaluated as timely if the recipient demonstrates why it could not request the determination before making the obligation or if the need for a waiver was not reasonably forseeable. For those waivers which do not have a reasonably foreseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then IHS will still consider granting the waiver.

The waiver request was not submitted earlier because of extensive legal discussions regarding waiver qualifications and whether Tribal community systems were considered public works. Tribal land status under the Alaska Native Claims Settlement Act is complex, and differs from that of Tribal lands on lower 48 reservations, and could have affected the applicability of Buy American provisions.

Delaying ongoing construction projects of needed water and wastewater systems will create public health implications in remote Alaska communities and there is no indication that ANTHC failed to request a waiver to avoid the requirements of the ARRA. In the interest of the Alaska Natives benefitting from the sanitation facilities constructed in the communities in this notice, the ANTHC decided to request this waiver. Accordingly, the IHS will evaluate the request as if it were timely made.

The IHS has determined, based on its 50-year experience constructing sanitation facilities for Alaska Native communities and the professional engineering judgment of the IHS Alaska Area Office, that it is in the overall public interest and benefit to incorporate the items in the listed sanitation facilities construction projects.

Further, as described above, in some cases projects are jointly funded by IHS and the EPA. The waivers apply to the listed projects regardless of whether the funding for the projects originated from IHS or EPA.

Authority: Public Law 111–5, Section 1605.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Gould, Regulations Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852–1627; call non-toll free (301) 443–7899; send via facsimile to (301) 443–9879; or send your email requests, comments, and return address to: Betty.Gould@ihs.gov.

Dated: December 12, 2011.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2011–32782 Filed 12–22–11; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Initial Review Group Subcommittee J—Population and Patient-Oriented Training

Date: February 16, 2012.

Time: 7:45 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Ilda M. Mckenna, PhD, Scientific Review Officer, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, ROOM 8111, Bethesda, MD 20892, (301) 496–7481, *mckennai@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/irg/irg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention

Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32968 Filed 12–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communication Disorders Advisory 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 Deafness and Other Communication Disorders Advisory Council.

Date: January 27, 2012.

Closed: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: 10 a.m. to 1:45 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, (301) 496–8693, *jordanc@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the 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, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. 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: *www.nidcd.nih.gov/about/groups/ndcdac/ndcdac.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32972 Filed 12–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel Special Emphasis Panel Two

Date: January 24–25, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville Hotel & Executive M, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Shakeel Ahmad, Ph.D. Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8139, Bethesda, MD 20892–8328, (301) 594–0114, *ahmads@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: December 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32979 Filed 12–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Screening Requirements for Carriers

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning: Screening Requirements for Carriers. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before February 21, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC. 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information

should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC. 20229–1177, at (202) 325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Screening Requirements for Carriers.

OMB Number: 1651–0122.

Form Number: None.

Abstract: Section 273(e) of the Immigration and Nationality Act (8 U.S.C. 1323(e) the Act) authorizes the Department of Homeland Security to establish procedures which carriers must undertake for the proper screening of their alien passengers prior to embarkation at the port from which they are to depart for the United States, in order to become eligible for an automatic reduction, refund, or waiver of a fine imposed under section 273(a)(1) of the Act. To be eligible to obtain such an automatic reduction, refund, or waiver of a fine, the carrier must provide evidence to CBP that it screened all passengers on the conveyance in accordance with the procedures listed in 8 CFR 273.3.

Some examples of the evidence the carrier may provide to CBP include: A description of the carrier's document screening training program; the number of employees trained; information regarding the date and number of improperly documented aliens intercepted by the carrier at the port(s) of embarkation; and any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Carriers.

Estimated Number of Respondents: 65.

Estimated Time per Respondent: 100 hours.

Estimated Total Annual Burden Hours: 6,500.

Dated: December 19, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–32891 Filed 12–22–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–123]

Notice of Submission of Proposed Information Collection to OMB; Inspector Candidate Assessment Questionnaire

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Individuals interested in conducting Uniform Physical Condition Standards inspections on behalf of PIH–REAC are requested to complete this form. The form is a questionnaire that provides PIH–REAC with basic background information about the individual's inspection skills and abilities.

DATES: *Comments Due Date: January 23, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0243) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Inspector Candidate Assessment Questionnaire

OMB Approval Number: 2577–0243

Form Numbers: HUD–50002

Description of the Need for the Information and Its Proposed Use:

Individuals interested in conducting Uniform Physical Condition Standards inspections on behalf of PIH–REAC are requested to complete this form. The form is a questionnaire that provides PIH–REAC with basic background information about the individual's inspection skills and abilities.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	800	1		1		800

Total Estimated Burden Hours: 800.

Status: Extension without change of a currently previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 20, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–32950 Filed 12–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–C–120]

Notice of Submission of Proposed Information Collection to OMB; Self-Help Homeownership Opportunity Program (SHOP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Correction.

SUMMARY: This notice informs the public that the Department of Housing and Urban Development has submitted to the Office of Management and Budget (OMB) a request for approval of the information collection requirement described below, as required by the Paperwork Reduction Act. Interested persons are invited to submit comments to OMB regarding this information collection. This is correction reporting burden hours were incorrect.

DATES: *Comments Due Date: January 23, 2012.*

ADDRESSES: Comments should refer to the proposal by name and/or OMB approval Number (2506–0157) and should be sent to: HUD Desk Officer, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of documents submitted to OMB may be obtained from Ms. Pollard.

Title of Proposal: Self-Help Homeownership Opportunity Program (SHOP).

OMB Approval Number: 2506–0157.

Agency Form Numbers: HUD–424, HUD–424B, HUD–424CB, HUD–2880, HUD–2990, HUD–2993, HUD–2995, HUD–9601, HUD–96011.

Description of the Information Collection and Its Proposed Use:

The Self-Help Homeownership Opportunity Program (SHOP) is authorized by the Housing Opportunity Program Extension Act of 1996, Section 11. The purpose of SHOP is to provide grant funds to facilitate and encourage innovative homeownership opportunities on a national, geographically diverse basis through the provision of self-help homeownership housing programs. SHOP funds are appropriated by Congress, generally annually. HUD publishes a SHOP Notice of Funding Availability (NOFA) that announces the amount of SHOP grant funds and the application criteria, including the rating and ranking system HUD will use to select grantees.

Frequency of Submission: Annually in response to the issuance of a SHOP NOFA.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	10	1		265.5	2,655

Total Estimated Burden Hours: 2,655.

Status: Extension of a previously approved information collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 20, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–32969 Filed 12–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–122]

Notice of Submission of Proposed Information Collection to OMB Additional On-Site Data Collection for the Housing Choice Voucher Program Administrative Fee Study

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This request is for the clearance of on-site data collection from public housing agencies (PHAs). The purpose of the proposed data collection is to identify a sample of PHAs that are verified to be operating high-performing and efficient HCV programs. The proposed data collection will take place through site visits to up to 30 PHAs and will include interviews with PHA staff and reviews of client files and administrative data collected by the PHA. The results of the site visits will be used to identify PHAs to participate in a national study of administrative fees in the HCV program. The national study of administrative fees will include 50 PHAs, some of which have already been identified through site visits that took place at 60 PHAs between April and September 2011. The current request is to conduct similar data collection at a new group of PHAs to supplement the national study sample. The results of the national study—for which separate OMB clearance will be sought—will be used

to estimate administrative fees and develop a new administrative fee allocation formula for the HCV program.

DATES: *Comments Due Date:* January 23, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Additional On-Site Data Collection for the Housing Choice Voucher Program Administrative Fee Study.

OMB Approval Number: 2525–New.

Form Numbers: None.

Description of The Need for the Information and its Proposed Use:

This request is for the clearance of on-site data collection from public housing agencies (PHAs). The purpose of the proposed data collection is to identify a sample of PHAs that are verified to be operating high-performing and efficient HCV programs. The proposed data collection will take place through site visits to up to 30 PHAs and will include interviews with PHA staff and reviews of client files and administrative data collected by the PHA. The results of the site visits will be used to identify PHAs to participate in a national study of administrative fees in the HCV program. The national study of administrative fees will include 50 PHAs, some of which have already been identified through site visits that took place at 60 PHAs between April and September 2011. The current request is to conduct similar data collection at a new group of PHAs to supplement the national study sample. The results of the national study—for which separate OMB clearance will be sought—will be used to estimate administrative fees and develop a new administrative fee allocation formula for the HCV program.

Members of Affected Public: Up to 150 public housing agency staff persons (up to 5 staff members at up to 30 sites).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Up to 5 PHA staff at each of the 30 study sites will be involved in the data collection (150 respondents total). Together, the PHA staff at each site will spend up to 12 hours preparing for the site visit and up to 16 hours being interviewed or otherwise assisting the research team during the site visit. The total burden for each PHA is 28 hours. The total estimated burden across all PHAs is 840 hours.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 20, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–32964 Filed 12–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–51]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at (800) 927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not

a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–(800) 927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; *Army:* Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, +-DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202: (571) 256–8145; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave. NW., 4th Floor, Washington, DC 20006: (202) 254–5522;

Navy: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free numbers).

Dated: December 15, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/23/2011

Suitable/Available Properties

Building

Alabama

Bldg. 8404
Redstone Arsenal
Redstone Arsenal AL 35898
Landholding Agency: Army
Property Number: 21201140050
Status: Unutilized
Comments: off-site removal only; 430 sq. ft.; current use: explosive testing; needs extensive repairs; possible asbestos and lead base paint

Kentucky

Bldg. 2980
Ft. Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21201140078
Status: Unutilized
Comments: off-site removal only; 6,900 sq. ft.; current use: office; possible asbestos and mold

Bldg. 1197
Ft. Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21201140079
Status: Unutilized
Comments: off-site removal only; 2,969 sq. ft; current use: office; possible lead base paint, asbestos, and mold

Rhode Island

FDA Davisville Site
113 Bruce Boyer Street
North Kingstown RI 02852
Landholding Agency: GSA
Property Number: 54201130008
Status: Excess
GSA Number: 1–F–RI–0520
Comments: 4,100 sq. ft.; recent use: storage; property currently has no heating (all repairs is the responsibility of owner)

South Dakota

Main House
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130011
Status: Surplus
GSA Number: 7–A–0523–3–AE
Comments: Off-site removal only; The property is a 2-story structure with 1,024 sq. ft. per floor for a total of 2,048 sq. ft.; structure type: Log Cabin; recent use: residential

Main Garage
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130012
Status: Surplus
GSA Number: 7–A–SD–0523–3–AF
Comments: Off-site removal only; 567 sq. ft.; structure type: Log Frame; recent use: vehicle storage

Metal Machine/Work Bldg.
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130013
Status: Surplus
GSA Number: 7–A–SD–0523–3–AG
Comments: Off-site removal only; 3,280 sq. ft.; structure type: Post/Pole w/Metal Siding; recent use: utility shed

Mobile Home
Lady C Ranch Rd.
Hot Springs SD 57477
Landholding Agency: GSA
Property Number: 54201130014
Status: Surplus
GSA Number: 7–A–0523–3–AH
Comments: Off-site removal only; 1,152 sq. ft.; structure type: manufactured home/double wide; recent use: residential

Mobile Home Garage
Lady C Ranch Rd.
Hot Springs SD 57747
Landholding Agency: GSA
Property Number: 54201130015
Status: Surplus
GSA Number: 7–A–SD–0523–3–AI
Comments: Off-site removal only; 729 sq. ft.; structure type: Post/Pole construction w/metal side; recent use: storage

Virginia

Bldgs. 00031 & 00017
8000 Jefferson Davis Hwy
Richmond VA 23297
Landholding Agency: Army
Property Number: 21201140039
Status: Underutilized
Comments: off-site removal only; sq. ft. varies; bldgs. in good condition; current use: Admin./warehouse

Washington

Ran West Bunkhouse
418 Sikverbrook Rod.
Randle WA 98377
Landholding Agency: GSA
Property Number: 54201140007
Status: Excess
GSA Number: 9–A–WA–1258
Comments: Double wide trailer for off-site removal only; 960 sq. ft.; current use: bunkhouse

2 Bldgs.
Bureau of Reclamation
Sunnyside WA
Landholding Agency: Interior
Property Number: 61201130003
Status: Excess
Directions: Storehouse and Lumber Shed
Comments: Off-site removal only for both bldgs.; Storehouse: 4,400 sq. ft.; Lumber Shed: 800 sq. ft.; bldgs. in poor condition—

need repairs; lead-base paint is present in bldgs.

Suitable/Available Properties

Land

North Dakota

Vacant Land of MSR Site
Stanley Mickelsen
Nekoma ND
Landholding Agency: GSA
Property Number: 54201130009
Status: Surplus
GSA Number: 7–D–ND–0499
Comments: 20.2 acres; recent use: unknown

Oklahoma

Tract No. 346
Bureau of Reclamation
N of Altus OK
Landholding Agency: Interior
Property Number: 61201140009
Status: Excess
Comments: 1.45 acres; current use: canal

Pennsylvania

Marienville Lot
USDA Forest Service
Marienville PA
Landholding Agency: GSA
Property Number: 54201140005
Status: Excess
GSA Number: 4–A–PA–807AD
Comments: 2.42 acres; current use: unknown

Suitable/Unavailable Properties

Building

Arizona

Willcox Patrol Station
200 W. Downew Street
Willcox AZ 85643–2742
Landholding Agency: GSA
Property Number: 54201110004
Status: Surplus
GSA Number: 9–X–AZ–0860
Comments: 2,448 sq. ft., most recent use: detention facility

California

Defense Fuel Support Pt.
Estero Bay Facility
Morro Bay CA 93442
Landholding Agency: GSA
Property Number: 54200810001
Status: Surplus
GSA Number: 9–N–CA–1606
Comments: former 10 acre fuel tank farm w/ associated bldgs/pipelines/equipment, possible asbestos/PCBs

Former SSA Bldg.
1230 12th Street
Modesto CA 95354
Landholding Agency: GSA
Property Number: 54201020002
Status: Surplus
GSA Number: 9–G–CA–1610
Comments: 11,957 sq. ft., needs rehab/ seismic retrofit work, potential groundwater contamination below site, potential flooding

Georgia

Fed. Bldg. Post Office/Court
404 N. Broad St.
Thomasville GA 31792
Landholding Agency: GSA
Property Number: 54201110006
Status: Surplus
GSA Number: 4–G–GA–878AA
Comments: 49,366 total sq. ft. Postal Svc currently occupies 11,101 sq. ft. through Sept. 30, 2012. Current usage: gov't offices, asbestos has been identified as well as plumbing issues.

Illinois

1LT A.J. Ellison
Army Reserve
Wood River IL 62095
Landholding Agency: GSA
Property Number: 54201110012
Status: Excess
GSA Number: 1–D–II–738
Comments: 17,199 sq. ft. for the Admin. Bldg., 3,713 sq. ft. for the garage, public space (roads and hwy) and utilities easements, asbestos and lead base paint identified, most current use: unknown.

Iowa

U.S. Army Reserve
620 West 5th St.
Garner IA 50438
Landholding Agency: GSA
Property Number: 54200920017
Status: Excess
GSA Number: 7–D–IA–0510
Comments: 5743 sq. ft., presence of lead paint, most recent use—offices/classrooms/ storage, subject to existing easements

Maryland

Appraisers Store
Baltimore MD 21202
Landholding Agency: GSA
Property Number: 54201030016
Status: Excess
GSA Number: 4–G–MD–0623
Comments: 169,801 sq. ft., most recent use— federal offices, listed in the Nat'l Register of Historic Places, use restrictions

Michigan

CPT George S. Crabbe USARC
2901 Webber Street
Saginaw MI
Landholding Agency: GSA
Property Number: 54201030018
Status: Excess
GSA Number: 1–D–MI–835
Comments: 3891 sq. ft., 3-bay garage maintenance building

Minnesota

FAA Outer Marker
9935 Newton Ave.
Minneapolis MN 55431
Landholding Agency: GSA
Property Number: 54201120010
Status: Excess
GSA Number: 1–I–MN–594
Comments: Public space and utilities easements; 108 sq. ft.

Minnesota

Bldg. 921
W. Main St.
Paynesville MN
Landholding Agency: GSA
Property Number: 54201120017
Status: Excess
GSA Number: 1–D–MN–0591
Comments: Bldg: 5,486 sf, Land: 3.9 acres, current use: Admin./Training Facility

Mississippi

James O. Eastland
245 East Capitol St.
Jackson MS 39201–2409
Landholding Agency: GSA
Property Number: 54201040020
Status: Excess
GSA Number: 4–G–MS–0567–AA
Directions: Federal Bldg. and Courthouse
Comments: 14,000 sq. ft., current/recent use: gov't offices and courtrooms, asbestos identified behind walls, and historic bldg. preservation covenants will be included in the Deed of Conveyance

Missouri

Federal Bldg/Courthouse
339 Broadway St.
Cape Girardeau MO 63701
Landholding Agency: GSA
Property Number: 54200840013
Status: Excess
GSA Number: 7–G–MO–0673
Comments: 47,867 sq. ft., possible asbestos/ lead paint, needs maintenance & seismic upgrades, 30% occupied—tenants to relocate within 2 yrs

Kirksville Property
FAA
Kirksville MO
Landholding Agency: GSA
Property Number: 54201120016
Status: Surplus
GSA Number: 7–U–MO–0690
Comments: 6 × 10, recent use: antenna tower

Montana

Swan Lake Guard Station
MP69 HWY 83 South
Swan Lake MT 55911
Landholding Agency: GSA
Property Number: 54201130004
Status: Surplus
GSA Number: 7–A–MT–0514–2
Comments: Off-site removal only; 615 sq. ft, recent use: office space

Rising Sun Boat
St. Mary Lake Glacier Nat'l Park
St. Mary Lake MT 59911
Landholding Agency: GSA
Property Number: 54201130005
Status: Surplus
GSA Number: 7–I–MT–0544–3
Comments: Off-site removal only; 358 sq. ft.; recent use: ticket office

Kalispell Shop
1899 Airport Rd.
Kalispell MT 59901
Landholding Agency: GSA
Property Number: 54201130006
Status: Surplus
GSA Number: 7–A–MT–0632
Comments: Off-site removal only; 560 sq. ft.; recent use: storage bldg.

Boulder Admin. Site
12 Depot Hill Rd.
Boulder MT 59632
Landholding Agency: GSA
Property Number: 54201130016
Status: Excess
GSA Number: 7–A–MT–532–AA
Comments: 4,799 sq. ft.; recent use: office, repairs are needed

New Hampshire

Federal Building

719 Main St.
Parcel ID: 424–124–78
Laconia NH 03246
Landholding Agency: GSA
Property Number: 54200920006
Status: Excess
GSA Number: 1–G–NH–0503
Comments: 31,271 sq. ft., most recent use—office bldg., National Register nomination pending

New Jersey

Camp Petricktown Sup. Facility
US Route 130
Pedricktown NJ 08067
Landholding Agency: GSA
Property Number: 54200740005
Status: Excess
GSA Number: 1–D–NJ–0662
Comments: 21 bldgs., need rehab, most recent use—barracks/mess hall/garages/quarters/admin., may be issues w/right of entry, utilities privately controlled, contaminants

Ohio

Oxford USAR Facility
6557 Todd Road
Oxford OH 45056
Landholding Agency: GSA
Property Number: 54201010007
Status: Excess
GSA Number: 1–D–OH–833
Comments: office bldg./mess hall/barracks/simulator bldg./small support bldgs., structures range from good to needing major rehab

Belmont Cty Memorial USAR Ctr
5305 Guernsey St.
Bellaire OH 43906
Landholding Agency: GSA
Property Number: 54201020008
Status: Excess
GSA Number: 1–D–OH–837
Comments: 11,734 sq. ft.—office/drill hall; 2,519 sq. ft.—maint. shop

Army Reserve Center
5301 Hauserman Rd.
Parma OH 44130
Landholding Agency: GSA
Property Number: 54201020009
Status: Excess
GSA Number: I–D–OH–842
Comments: 29, 212, and 6,097 sq. ft.; most recent use: office, storage, classroom, and drill hall; water damage on 2nd floor; and wetland property

LTC Dwite Schaffner
U.S. Army Reserve Center
1011 Gorge Blvd.
Akron OH 44310
Landholding Agency: GSA
Property Number: 54201120006
Status: Excess
GSA Number: 1–D–OH–836
Comments: 25,039 sq. ft., most recent use: Office; in good condition

Oregon

3 Bldgs/Land
OTHR–B Radar
Cty Rd 514
Christmas Valley OR 97641
Landholding Agency: GSA
Property Number: 54200840003
Status: Excess
GSA Number: 9–D–OR–0768
Comments: 14000 sq. ft. each/2626 acres, most recent use—radar site, right-of-way

U.S. Customs House
220 NW 8th Ave.
Portland OR
Landholding Agency: GSA
Property Number: 54200840004
Status: Excess
GSA Number: 9–D–OR–0733
Comments: 100,698 sq. ft., historical property/National Register, most recent use—office, needs to be brought up to meet earthquake code and local bldg codes, presence of asbestos/lead paint

South Carolina

Naval Health Clinic
3600 Rivers Ave.
Charleston SC 29405
Landholding Agency: GSA
Property Number: 54201040013
Status: Excess
GSA Number: 4–N–SC–0606
Comments: Redetermination: 399,836 sq. ft., most recent use: office

Tennessee

NOAA Admin. Bldg.
456 S. Illinois Ave.
Oak Ridge TN 38730
Landholding Agency: GSA
Property Number: 54200920015
Status: Excess
GSA Number: 4–B–TN–0664–AA
Comments: 15,955 sq. ft., most recent use—office/storage/lab

Texas

FAA RML Facility
11262 N. Houston Rosslyn Rd.
Houston TX 77086
Landholding Agency: GSA
Property Number: 54201110016
Status: Surplus
GSA Number: 7–U–TX–1129
Comments: 448 sq. ft., recent use: storage, asbestos has been identified in the floor

Rattle Snake Scoring Ste.
1085 County Rd. 332
Pecos TX 79772
Landholding Agency: GSA
Property Number: 54201120005
Status: Excess
GSA Number: 7–D–TX–0604–AM
Comments: 8,396 sq. ft., most recent use: training ste., previously reported by Air Force and deemed ''unsuitable'' because property was in a secured area and published in May 2009.

Virginia

Tract 05–511, Qrts. 11
7941 Brock Rd.
Spotsylvania VA 22553
Landholding Agency: GSA
Property Number: 54201110001
Status: Excess
GSA Number: 4–I–VA–0756
Comments: 1642 sq. ft., off-site removal only, previously reported by Interior and published as suitable/available in the 10.22.2010 FR

Hampton Rds, Shore Patrol Bldg
811 East City Hall Ave
Norfolk VA 23510
Landholding Agency: GSA
Property Number: 54201120009
Status: Excess
GSA Number: 4–N–VA–758
Comments: 9,623 sq. ft.; current use: storage, residential

Washington

Fox Island Naval Lab
630 3rd Ave.
Fox Island WA 98333
Landholding Agency: GSA
Property Number: 54201020012
Status: Surplus
GSA Number: 9–D–WA–1245
Comments: 6405 sq. ft.; current use: office and lab

West Virginia

Naval Reserve Center
841 Jackson Ave.
Huntington WV 25704
Landholding Agency: GSA
Property Number: 54200930014
Status: Excess
GSA Number: 4–N–WV–0555
Comments: 31,215 sq. ft., presence of asbestos/lead paint, most recent use—office

Harley O. Staggers Bldg.
75 High St.
Morgantown WV 26505
Landholding Agency: GSA
Property Number: 54201020013
Status: Excess
GSA Number: 4–G–WV–0557
Comments: 57,600 sq. ft; future owners must maintain exposure prevention methods (details in deed); most recent use: P.O. and federal offices

Suitable/Unavailable Properties

Land

Arizona

0.23 acres
87th Ave.
Glendale AZ
Landholding Agency: GSA
Property Number: 54201010005
Status: Excess
GSA Number: 9–I–AZ–853
Comments: 0.23 acres used for irrigation canal

Land
95th Ave/Bethany Home Rd
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201010014
Status: Surplus
GSA Number: 9–AZ–852
Comments: 0.29 acre, most recent use—irrigation canal

0.30 acre
Bethany Home Road
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201030010
Status: Excess
GSA Number: 9–I–AZ–0859
Comments: 10 feet wide access road

California

Parcel F–2 Right of Way
null
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201030012
Status: Surplus

GSA Number: 9–N–CA–1508–AI
Comments: Correction: 631.62 sq. ft., encroachment

Drill Site #3A
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040004
Status: Surplus
GSA Number: 9–B–CA–1673–AG
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #4
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040005
Status: Surplus
GSA Number: 9–B–CA–1673–AB
Comments: 2.21 acres, mineral rights, utility easements

Drill Site #6
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040006
Status: Surplus
GSA Number: 9–B–CA–1673–AC
Comments: 2.13 acres, mineral rights, utility easements

Drill Site #9
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040007
Status: Surplus
GSA Number: 9–B–CA–1673–AH
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #20
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040008
Status: Surplus
GSA Number: 9–B–CA–1673–AD
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #22
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040009
Status: Surplus
GSA Number: 9–B–CA–1673–AF
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #24
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040010
Status: Surplus
GSA Number: 9–B–CA–1673–AE
Comments: 2.06 acres, mineral rights, utility easements

Drill Site #26
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040011
Status: Surplus
GSA Number: 9–B–CA–1673–AA
Comments: 2.07 acres, mineral rights, utility easements

Colorado

Common Pt. Shooting Rng.
Bureau of Reclamation
Drake CO 80515
Landholding Agency: GSA
Property Number: 54201120003
Status: Excess
GSA Number: 7–1–CO—0678
Comments: 35.88 acres; If the purchaser ceases using the property as a firing range they will be held to a higher standard of lead remediation by the local and Federal environmental protection agencies.

Louisiana

Almonaster
4300 Almonaster Ave.
New Orleans LA 70126
Landholding Agency: GSA
Property Number: 54201110014
Status: Surplus
GSA Number: 7–D–LA–0576
Comments: 9.215 acres

Massachusetts

FAA Site
Massasoit Bridge Rd.
Nantucket MA 02554
Landholding Agency: GSA
Property Number: 54200830026
Status: Surplus
GSA Number: MA–0895
Comments: approx 92 acres, entire parcel within MA Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program

Pennsylvania

approx. 16.88
271 Sterrettania Rd.
Erie PA 16506
Landholding Agency: GSA
Property Number: 54200820011
Status: Surplus
GSA Number: 4–D–PA–0810
Comments: vacant land

Texas

FAA Outermarker—Houston
Spring TX 77373
Landholding Agency: GSA
Property Number: 54201040001
Status: Surplus
GSA Number: 7–U–TX–1110
Comments: 0.2459 acres, subject to restrictions/regulations regarding the Houston Intercontinental Airport, may not have access to a dedicated roadway

FAA
Directional Finder
Lampasas TX
Landholding Agency: GSA
Property Number: 54201120015
Status: Excess
GSA Number: 7–U–TX–1131
Comments: 1.51 acres

Parcel 2
Camp Bowie
Brownwood TX 76801
Landholding Agency: GSA
Property Number: 54201130001
Status: Surplus
GSA Number: 7–D–TX–0589
Comments: 22.58 acres, two storage units on land approx. 600 sq. ft., recent use: storage, legal constraints: access easement, 10% of property in floodway

Unsuitable Properties

Building

Alabama

4 (PADS) Bldgs.
7 Frankford Ave
Anniston Army Depot
Anniston AL
Landholding Agency: Army
Property Number: 21201140043
Status: Unutilized
Directions: 00810, 00814, 00815, M5001
Reasons: Contamination, Within 2000 ft. of flammable or explosive material, Secured Area

Bldg 00807
7 Frankford Ave
Anniston Army Depot
Anniston AL 36201
Landholding Agency: Army
Property Number: 21201140044
Status: Unutilized
Reasons: Contamination, Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Redstone Arsenal
Redstone Arsenal AL 35898
Landholding Agency: Army
Property Number: 21201140045
Status: Unutilized
Directions: 7359A, 7359B, 7359C, 1401A, 01401
Reasons: Contamination, Secured Area, Extensive deterioration

Bldg 7358A
Sandpiper Road
Redstone Arsenal AL 35898
Landholding Agency: Army
Property Number: 21201140047
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg C1302
Fort McClellan AL 36205
Landholding Agency: Army
Property Number: 21201140073
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg 28150
RT 52, Highfalls Stagefield
Fort Rucker AL 36344
Landholding Agency: Army
Property Number: 21201140074
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Isolated area

California

2 Bldgs
Sierra Army Depot
Herlong CA 96113
Landholding Agency: Army
Property Number: 21201140076
Status: Unutilized
Directions: 00349, 00587
Reasons: Secured Area, Extensive deterioration, Contamination

Bldg 00203
4th Street, Sierra Army Depot
Herlong CA 96113
Landholding Agency: Army
Property Number: 21201140077
Status: Unutilized

Reasons: Secured Area, Contamination

Colorado

10 Bldgs
Pueblo Chemical Depot
Pueblo CO 81006
Landholding Agency: Army
Property Number: 21201140062
Status: Excess
Directions: 0015S, 0016A, 0016S, 0017S, 0018S, 0019S, 00S34, 0014S, 0013S, 0012S
Reasons: Secured Area, Contamination

Bldg 00034
Pueblo Chemical Depot
Pueblo CO 81006
Landholding Agency: Army
Property Number: 21201140066
Status: Excess
Comments: not cost effective to repair
Reasons: Extensive deterioration

Hawaii

7 Bldgs.
91–1227 Enterprise Ave
Kalaeloa
Kapolei HI 96707
Landholding Agency: Army
Property Number: 21201140046
Status: Unutilized
Directions: 01676, 01677, 01818, 01875, 01954, 00537, 00182
Reasons: Extensive deterioration, Secured Area

Bldg 01537
124 Takata Road
Honolulu HI 96819
Landholding Agency: Army
Property Number: 21201140075
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Idaho

Bldg 00253
4097 W. Cessna St.
Gowen Field 16A20
Boise ID 83705
Landholding Agency: Army
Property Number: 21201140068
Status: Excess
Reasons: Extensive deterioration, Secured Area

Kansas

Bldg 00512 & 00617
Fort Riley
Fort Riley KS 66442
Landholding Agency: Army
Property Number: 21201140064
Status: Unutilized
Reasons: Secured Area

Maryland

Bldg 00517
517 Blossom Point Road
Blossom Point Research Facility
Welcome MD 20693
Landholding Agency: Army
Property Number: 21201140040
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 00402
402 Blossom Point Road
Blossom Point Research Facility
Welcome MD 20693
Landholding Agency: Army
Property Number: 21201140041
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 178NS
Naval Support Activity
Annapolis MD 21402
Landholding Agency: Navy
Property Number: 77201140017
Status: Underutilized
Comments: Building damaged and considered condemned due to automobile accident
Reasons: Extensive deterioration

Missouri

Bldg T62–9
Lake City Army Ammunition Plant
Independence MO 64051
Landholding Agency: Army
Property Number: 21201140071
Status: Underutilized
Reasons: Contamination, Secured Area

2 Bldgs.
Railroad Ave.
Fort Leonard Wood MO 65473
Landholding Agency: Army
Property Number: 21201140072
Status: Unutilized
Directions: 02351, 02352
Reasons: Secured Area

New Jersey

9 Bldgs.
Pictinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21201140034
Status: Unutilized
Directions: 00639,00623, 00623A, 00623B, 0623C, 0623D, 0623E, 0075, 0075A
Reasons: Extensive deterioration, Secured Area

5 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21201140035
Status: Unutilized
Directions: 00281, 03013, 00332, 0623F, 0639A
Reasons: Secured Area, Extensive deterioration, Contamination

Rhode Island

Bldg. 000P2
570 Read Schoolhouse Rd.
Coventry RI 02816
Landholding Agency: Army
Property Number: 21201140038
Status: Excess
Reasons: Contamination, Secured Area

Tennessee

Bldgs. 5291 & A1584
Fort Campbell Military Installation
Fort Campbell TN 42223
Landholding Agency: Army
Property Number: 21201140042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Texas

4 Bldgs.
Joint Base San Antonio
Houston TX 78234
Landholding Agency: Air Force
Property Number: 18201140063
Status: Unutilized
Directions: 4112, 4113, 4114, 4124
Comments: not feasible to repair
Reasons: Extensive deterioration

Bldg 1674
42nd & Old Ironsides
Fort Hood TX 76544
Landholding Agency: Army
Property Number: 21201140065
Status: Excess
Reasons: Secured Area, Contamination

Bldg 04920
Santa Fe Ave & Clear Creek Road
Fort Hood TX 76544
Landholding Agency: Army
Property Number: 21201140067
Status: Unutilized
Reasons: Contamination, Secured Area

Virginia

14 Bldgs.
Bldg. T0472
Fort Pickett Training Center
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21201140036
Status: Excess
Directions: T0116, T0207, T0208, T0209, T0210, T0114, T0115, T0211, T0213, T0214, T0306, T0307, T0310, T0313
Reasons: Extensive deterioration, Secured Area, Contamination

20 Bldgs.
Fort Pickett Training Center
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21201140037
Status: Unutilized
Directions: T2807, T1312, T1317, T1319, T1348, T1349, T1350, T1351, T1352, T1353, T1356, T1360, T1361, T1362, T1808, T2304, T2305, T2306, T2800, T2801
Reasons: Contamination, Secured Area, Extensive deterioration

4 Bldgs.
8000 Jefferson Davis Hwy
Defense Supply Center
Richmond VA 23297
Landholding Agency: Army
Property Number: 21201140063
Status: Unutilized
Directions: 00091, 00006, 00007, 00010
Reasons: Secured Area

Bldg 00104
8000 Jefferson Davis Hwy
Richmond VA 23297
Landholding Agency: Army
Property Number: 21201140069
Status: Unutilized
Reasons: Secured Area

Bldg HH025
1555 South Gate Road
Arlington VA 22214
Landholding Agency: Army
Property Number: 21201140070
Status: Underutilized
Reasons: Secured Area, Extensive deterioration

Wisconsin

3 Bldgs.
Fort McCoy

Fort McCoy WI 54656
Landholding Agency: Army
Property Number: 21201140061
Status: Underutilized
Directions: 00446, 00447, 02003
Reasons: Extensive deterioration, Secured Area

Unsuitable Properties

Land

Oklahoma

Pine River Project
Bureau of Reclamation
N of Altus OK
Landholding Agency: Interior
Property Number: 61201140008
Status: Excess
Reasons: Secured Area

[FR Doc. 2011–32553 Filed 12–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N268; FXGO16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before January 23, 2012.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government'' and ''the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government'' (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment before final action on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Curt Harbsmeier, Lakeland, FL; PRT–033580

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Daniel Arenas, Miami, FL; PRT–60140A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiate*) and Galapagos tortoise (*Chelonoidis nigra*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Giordi Evenson, Saint Paul, MN; PRT–60356A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for golden parakeet (*Guarouba guarouba*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Stephan Haller, Summerville, SC; PRT–60965A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiate*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: National Institute of Health, Frederick, MD; PRT–694126

The applicant requests renewal of a permit to import biological samples from wild, captive-held and/or captive-bred mammals for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Terrance Wolosek, Plover, WI; PRT–60798A

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–32876 Filed 12–22–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N240; FF08ESMF00–FXES11120800000F2–123]

Draft Environmental Impact Statement and Proposed Maricopa Sun Solar Complex Multi-Species Habitat Conservation Plan, Kern County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of public scoping meetings; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a draft environmental impact statement (EIS) under the National Environmental Policy Act for the proposed Maricopa Sun Solar Complex Habitat Conservation Plan (HCP) under development by Maricopa Sun, LLC. The draft EIS will evaluate the impacts of several alternatives related to the HCP being proposed by Maricopa Sun, LLC in support of its anticipated application for an Endangered Species Act permit for incidental take of five federally endangered species (one reptile and four mammal species) and 14 California special status species (one amphibian species, three reptile species, six avian species, and four mammal species) from activities associated with the construction, operation, and decommissioning of a 700 megawatt photo-voltaic power generating facility and implementation of conservation actions associated with the HCP in Kern County, California. We also announce plans for a public scoping meeting and the opening of a public comment period. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party.

DATES: A public scoping meeting will be held to solicit comments from interested parties to assist in determining the scope of the environmental analysis, including the alternatives to be addressed, and to identify significant environmental issues related to the Proposed Action. The scoping meeting date and location are:

- Monday, January 23, 2012 from 1–3 p.m.
- Kern County Public Services Building, 2700 M Street Conference Room 1–A, Bakersfield, CA 93301.

To ensure consideration, please send your written comments by close of business February 21, 2012.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comment is in reference to the Maricopa Sun Solar Complex Habitat Conservation Plan.

- *U.S. Mail:* 2800 Cottage Way, Room W–2605, Sacramento, California 95825–1846.
- *In-Person Drop-off, Viewing, or Pickup:* Call (916) 414–6600 to make an appointment during regular business hours to drop off comments or view received comments at the above location.
- *Fax:* Justin Sloan or Mike Thomas, (916) 414–6713, Attn.: Maricopa Sun Solar Complex Habitat Conservation Plan.

FOR FURTHER INFORMATION CONTACT: Justin Sloan, Senior Fish and Wildlife Biologist, (916) 414–6600 (phone) or Mike Thomas, Chief, Habitat Conservation Planning Division, (916) 414–6678 (phone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.;* NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Act). We intend to prepare a draft EIS to evaluate the impacts of several alternatives related to the potential issuance of an incidental take permit (ITP) to the applicant, as well as impacts of the implementation of the supporting HCP.

The applicant proposes to develop an HCP as part of their application for an ITP under section 10(a)(1)(B) of the Act. The proposed HCP will include measures necessary to minimize and mitigate the impacts, to the maximum extent practicable, of potential proposed taking of federally listed and non-listed species to be covered by the HCP, and the habitats upon which they depend, resulting from construction, operation, and decommissioning of a 700 megawatt photo-voltaic power generating facility and implementation of conservation actions associated with the HCP in Kern County, California.

The project is a proposed 700 megawatt solar power facility within a proposed planning area covering approximately 6,766 acres in the southwest portion of unincorporated Kern County, California. Multiple parcels comprise the project, which are approximately six to 20 miles east of Taft along South Lake Road and along Copus Road. The individual sites can be accessed from Interstate 5, South Lake Road and Copus Road, and several other access roads.

Background

Section 9 of the Act prohibits taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term ''harm'' is defined in the regulations as including significant habitat modification or degradation that results in death or injury to listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in the regulations as to carry out actions that create the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed wildlife species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing incidental take permits to non-Federal entities for the take of endangered and threatened wildlife species, provided the following criteria are met:

1. The taking will be incidental;

2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;

3. The applicants will develop a proposed HCP and ensure that adequate funding for the plan will be provided;

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Thus, the purpose of issuing an ITP would be to allow the applicant to carry out development activities associated with the proposed photo-voltaic power generating facility while conserving the covered species and their habitats. The Service expects that the applicants will request ITP coverage for a period of 50 years.

Alternatives in the Draft Environmental Impact Statement

The proposed action presented in the draft EIS will be compared to the no-action alternative. The no-action alternative represents estimated future conditions assuming an ITP is not issued, to which the proposed action's estimated future conditions can be compared. Other alternatives, including their potential impacts, will also be addressed in the draft EIS.

No-Action Alternative

Under the no-action alternative, an ITP pursuant to Section 10(a)(1)(B) of the Act would not be issued for development of the Maricopa Sun Solar Complex Project. The proposed Maricopa Sun Solar Complex Project and HCP would not occur without issuance of an ITP. According to the applicant, the proposed planning area would be reconsidered and the existing land uses would be maintained at the sites of proposed photovoltaic facilities until and unless an ITP could be secured. The applicant's intended purpose for the project would not be met under the no-action alternative.

Proposed Alternative

The proposed action is the issuance of an ITP to Maricopa Sun, LLC covering impacts to the 20 covered species resulting from development activities within the proposed planning area for a period of 50 years. The proposed HCP, which must meet the requirements of section 10(a)(2)(A) of the Act, including measures that minimize and mitigate the effects of the potential incidental take of covered species to the maximum extent practicable, would be developed and implemented by the applicant. This alternative would be intended to allow for a comprehensive mitigation approach for unavoidable impacts and reduce permit processing times and efforts for the applicant and the Service.

Activities proposed for coverage under the proposed ITP would be otherwise lawful activities that could occur consistent with the HCP, to include, but not be limited to the following general categories:

1. Pre-construction
2. Construction
3. Operation
4. Decommissioning
5. Preservation/Enhancement
6. Conservation Plan Management

Pre-construction could include activities such as surveying and staking, clearing and grubbing, staging areas, temporary access roads, drainage and erosion control, and geotechnical drilling. Construction related activities could include grading and compaction, trenching, paving of access roads, installation of solar arrays, meteorological stations, transmission lines, septic leach fields, fencing, and landscaping. Construction of solar facilities on all sites is anticipated to be completed over an 8 to 10 year period from the commencement of the initial development; however, unknown constraints could extend the development phase to a 10 to 15 year period. Construction of the project will occur in a series of approximately 1 megawatt blocks, consisting of approximately 5 to 8.64 acres each. It is anticipated that construction of each section (640 acres) within the Maricopa Sun Solar Complex will take 12 to 18 months. Operation related activities could include solar panel maintenance, on-site parking, operation of solar modules, inspection, and repair of equipment, and operation of lighting. Typical activities associated with decommissioning of the solar energy facility include removal of all solar electric systems, buildings, cabling, electrical components, breaking up of concrete pads and foundations, removal of access roads, additional grading, and replacement of soil disturbed from decommissioning. Preservation/enhancement and conservation plan management activities could include vegetation control (i.e., grazing and mowing), fence installation, special status species monitoring (i.e., surveys such as trapping, use of remote cameras and spotlighting), and habitat restoration and creation.

We anticipate that the following five federally listed endangered species will be included as covered species in the applicants' proposed HCP:

Blunt-nosed leopard lizard (*Gambelia sila*)
Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*)
Giant kangaroo rat (*Dipodomys ingens*)
San Joaquin kit fox (*Vulpes macrotis mutica*)
Buena Vista Lake shrew (*Sorex ornatus relictus*)

We also anticipate that the following federally non-listed species will be included as covered species in the applicant's proposed HCP:

Western spadefoot (*Spea hammondii*)
Silvery legless lizard (*Anniella pulchra pulchra*)
San Joaquin whipsnake (*Masticophis flagellum ruddocki*)
California horned lizard (*Phrynosoma coronatum*)
Western Burrowing owl (*Athene cunicularia*)
Swainson's hawk (*Buteo swainsoni*)
Mountain plover (*Charadrius montanus*)
Northern harrier (*Circus cyaneus*)
White-tailed kite (*Elanus leucurus*)
Le Conte's thrasher (*Toxostoma lecontei*)
San Joaquin antelope squirrel (*Ammospermophilus nelson*)
Western mastiff bat (*Eumops perotis californicus*)
Tulare grasshopper mouse (*Onychomys torridus tularensis*)
San Joaquin pocket mouse (*Perognathus inornatus*).

Inclusion of these non-listed species as covered species will be determined during the HCP planning and development process. If included as covered species, the HCP will treat these species the same as the federally listed species. All species included in the incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Other Alternatives

The draft EIS will include a reasonable range of additional alternatives. The range of alternatives considered in the draft EIS could include variations in impacts, conservation, permit duration, covered species, covered activities, permit area, or a combination of these elements.

Environmental Review and Next Steps

The Service will conduct an environmental review to analyze the proposed action, along with other alternatives evaluated and the associated impacts of each. The draft EIS will evaluate impacts for each covered species and is expected to provide biological descriptions of the

affected species and habitats, as well as the effects of the alternatives on other resources, such as vegetation, wetlands, wildlife, geology and soils, air quality, water resources, water quality, cultural resources, land use, recreation, water use, local economy, and environmental justice.

Following completion of the environmental review, the Service will publish a notice of availability and a request for comment on the draft EIS and the applicant's permit application, which will include the proposed HCP. The draft EIS and proposed HCP are expected to be completed and available to the public in spring 2012.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider these comments in developing a draft EIS and in the development of a HCP and ITP. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the planning area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act;
6. Identification of any other alternatives to the proposed action that should be analyzed in the draft EIS; and
7. Identification of any other environmental issues that should be considered in the draft EIS.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

Comments and materials we receive, as well as supporting documentation we use in preparing the EIS document, will be available for public inspection by appointment, during normal business hours, at our office (see **FOR FURTHER INFORMATION CONTACT**).

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, 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.

Scoping Meetings

See **DATES** for the date and time of our public meeting. The purpose of scoping meetings is to provide the public with a general understanding of the background of the proposed HCP and activities it would cover, alternative proposals under consideration for the draft EIS, and the Service's role and steps to be taken to develop the draft EIS for the proposed HCP.

The meeting format will consist of a formal presentation of the proposed action, summary of the NEPA process, and presentation of oral comments from the public. The primary purpose of these meetings and public comment period is to solicit suggestions and information on the scope of issues and alternatives for the Service to consider when drafting the EIS. Written comments will be accepted at the meetings. Comments can also be submitted by methods listed in the **ADDRESSES** section. Once the draft EIS and proposed HCP are complete, there will be additional opportunity for public comment on the content of the EIS though a Notice of Availability.

Meeting Location Accommodations

Please note that the meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least one week in advance of the meeting.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and by NEPA Regulations (40 CFR 1501.7, 40 CFR 1506.6, and 1508.22).

Paul McKim,

Acting Deputy Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 2011–32894 Filed 12–22–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Law and Order on Indian Reservations—Marriage & Dissolution Applications; Request for Comments

AGENCIES: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting to the Office of Management and Budget (OMB) a request for renewal for the collection of information titled ''Law and Order on Indian Reservations—Marriage & Dissolution Applications.'' The information collection is currently authorized by OMB Control Number 1076–0094, which expires December 31, 2011.

DATES: Interested persons are invited to submit comments on or before *January 23, 2012.*

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_DOCKET@omb.eop.gov.* Please send a copy of your comments to Tricia Tingle, Associate Director, Tribal Justice Support, Office of Justice Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4141, Washington, DC 20240; *Tricia.Tingle@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Tricia Tingle (202) 208–2675. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs is seeking renewal of the approval for the information collection conducted under 25 CFR 11.600(c) and 11.606(c). This information collection allows the Clerk of the Court of Indian Offenses to collect personal information necessary for a Court of Indian Offenses to issue a marriage license or dissolve a marriage. Courts of Indian Offenses have been established on certain Indian reservations under the authority vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2, 9, and 13, which authorize appropriations for ''Indian judges.'' The courts provide for the administration of justice for Indian tribes in those areas where the tribes

retain jurisdiction over Indians, exclusive of State jurisdiction, but where tribal courts have not been established to exercise that jurisdiction and the tribe has, by resolution or constitutional amendment, chosen to use the Court of Indian Offenses. Accordingly, Courts of Indian Offenses exercise jurisdiction under 25 CFR part 11. Domestic relations are governed by 25 CFR 11.600, which authorizes the Court of Indian Offenses to conduct and dissolve marriages. In order to obtain a marriage license in a Court of Indian Offenses, applicants must provide the six items of information listed in 25 CFR 11.600(c), including identifying information such as Social Security number, information on previous marriage, relationship to the other applicant, and a certificate of the results of any medical examination required by applicable tribal ordinances or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located. To dissolve a marriage, applicants must provide the six items of information listed in 25 CFR 11.606(c), including information on occupation and residency (to establish jurisdiction), information on whether the parties have lived apart for at least 180 days or if there is serious marital discord warranting dissolution, and information on the children of the marriage and whether the wife is pregnant (for the court to determine the appropriate level of support that may be required from the non-custodial parent). (25 CFR 11.601) Two forms are used as part of this information collection, the Marriage License Application and the Dissolution of Marriage Application. BIA published a notice on September 14, 2011, in the **Federal Register** seeking comment for 60 days on renewal of this information collection, but received no comments. *See* 76 FR 56786.

II. Request for Comments

BIA requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of our 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 conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. This information collection expires December 31, 2011.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, email address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0094.

Title: Law and Order on Indian Reservations—Marriage & Dissolution Applications.

Brief Description of Collection: Submission of this information allows applicants to obtain a benefit, namely, the issuance of a marriage license or a decree of dissolution of marriage from the Court of Indian Offenses.

Type of Review: Extension without change of a currently approved collection.

Respondents: Individuals.

Number of Respondents: 260 per year, on average.

Total Number of Responses: 260 per year, on average.

Frequency of Response: On occasion.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden: 65 hours.

Dated: December 9, 2011.

Alvin Foster,

Assistant Director for Information Resources.

[FR Doc. 2011–32896 Filed 12–22–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

IDAHO: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially accepted the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the date specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the U.S. Fish and Wildlife Service to meet their administrative needs. The lands surveyed are:

The plat constituting the entire survey record of the survey of certain islands in the Snake River, T. 5 N., R. 6 W., T. 6 N., R. 5 W., T 6 N., R. 6 W., T. 7 N., R. 5 W., T. 9 N., R. 5 W., T. 10 N., R. 5 W., T. 11 N., Rs. 5 and 6 W., T. 11 N., R. 6 W., T. 11 N., R. 7 W., Boise Meridian, Idaho, was accepted October 28, 2011.

The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, on January 23, 2012. This survey was executed at the request of the U.S. Fish and Wildlife Service to meet certain administrative and management purposes.

Dated: October 28, 2011.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2011–32897 Filed 12–22–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Little Bighorn Battlefield National Monument, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of sacred objects and repatriation to the lineal descendant stated below may occur if no additional claimants come forward. Any other individuals who believe they are lineal descendants of the individual who owned these sacred objects and who wish to claim the items should contact Little Bighorn Battlefield National Monument.

DATES: Any other individuals who believe they are lineal descendants of the individual who owned these sacred objects and who wish to claim the items should contact Little Bighorn Battlefield National Monument at the address below by January 23, 2012.

ADDRESSES: Kate Hammond, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022, telephone (406) 638–3201.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Little Bighorn Battlefield National Monument.

History and description of the cultural items

The two cultural items are a rattle made of rawhide with attached horse hair tail, eagle feather, and buffalo wool; and a grass seed bag made from a flour sack. The two items belonged to Isaac Grasshopper, who resided on the Northern Cheyenne Reservation. In 1922, Dr. Thomas B. Marquis, a physician on the Tongue River Reservation (Northern Cheyenne), traded Mr. Grasshopper his old coon skin coat for the rattle and the seed bag. In 1942, the two objects were donated to Custer Battlefield National Cemetery, now known as Little Bighorn Battlefield National Monument, by Dr. Marquis' daughters, Mrs. Millie Ellen Marquis Hastings and Mrs. Anna Rose Octavia Marquis Heil.

The two cultural items described above have been claimed by Steve Small, Isaac Grasshopper's great-great-grandson. The rattle and seed bag are needed by Mr. Small and his sons to continue traditional ceremonies. The Northern Cheyenne Cultural Commission and Tribal Historic Preservation Office corroborated Little Bighorn Battlefield National Monument's determination that Steve Small is the most appropriate recipient under the Northern Cheyenne traditional kinship system and common law system of descendance.

Determinations made by Little Bighorn Battlefield National Monument

Officials of Little Bighorn Battlefield National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the two cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3005(a)(5)(A), Mr. Small is the direct lineal descendant of the individual who owned these sacred objects.

Additional Requestors and Disposition

Any other individuals who believe they are lineal descendants of the individual who owned these sacred objects and who wish to claim the items should contact Kate Hammond, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022, telephone (406) 638–3201, before January 23, 2012. Repatriation of the sacred objects to Mr. Steve Small may proceed after that date if no additional claimants come forward.

Little Bighorn Battlefield National Monument is responsible for notifying Mr. Steve Small; the Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne-Arapaho Tribes of Oklahoma); Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–33013 Filed 12–22–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate a Cultural Item: U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Little Bighorn Battlefield National Monument, in consultation with the appropriate Indian tribes, has determined that a cultural item meets the definition of sacred object and repatriation to the lineal descendant stated below may occur if no additional claimants come forward. Any other individuals who believe they are lineal descendants of the individual who owned the sacred object and who wish to claim the item should contact Little Bighorn Battlefield National Monument.

DATES: Any other individuals who believe they are lineal descendants of the individual who owned the sacred object and who wish to claim the item should contact Little Bighorn Battlefield National Monument at the address below by January 23, 2012.

ADDRESSES: Kate Hammond, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT, 59022–0039, telephone (406) 638–3201.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT that meets the definition of sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Little Bighorn Battlefield National Monument.

History and Description of the Cultural Item

The cultural item is a wooden framed trade mirror adorned with brass tacks

and otter fur strips. Two small medicine bags are attached. The mirror was used in the 1870s by the Cheyenne warrior Long Jaw. In 1957 the mirror was purchased from Albert Long Jaw, grandson of Long Jaw, by the Custer Battlefield Historic Museum Association and later donated to Little Bighorn Battlefield National Monument.

Frank Long Jaw, Sr., son of Albert Long Jaw and great-grandson of Cheyenne warrior Long Jaw, the original owner, is requesting repatriation of the cultural item described above. The mirror is needed by Mr. Long Jaw to continue traditional ceremonies. The Northern Cheyenne Cultural Commission and Tribal Historic Preservation Office corroborated Little Bighorn Battlefield National Monument's determination that Frank Long Jaw, Sr. is the most appropriate recipient under the Northern Cheyenne traditional kinship system and common law system of descendance.

Determinations Made by Little Bighorn Battlefield National Monument

Officials of Little Bighorn Battlefield National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3005(a)(5)(A), Mr. Frank Long Jaw, Sr. is the direct lineal descendant of the individual who owned the sacred object.

Additional Requestors and Disposition

Any other individuals who believe they are lineal descendants of the individual who owned this sacred object and who wish to claim the item should contact Kate Hammond, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT, 59022–0039, telephone (406) 638–3201, before January 23, 2012. Repatriation of the sacred object to Mr. Frank Long Jaw, Sr. may proceed after that date if no additional claimants come forward.

Little Bighorn Battlefield National Monument is responsible for notifying Mr. Frank Long Jaw, Sr.; the Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne-Arapaho Tribes of Oklahoma); Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–33010 Filed 12–22–11; 8:45 a.m.]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Little Bighorn Battlefield National Monument, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of sacred objects and repatriation to the lineal descendant stated below may occur if no additional claimants come forward. Any other individuals who believe they are lineal descendants of the individual who owned these sacred objects and who wish to claim the items should contact Little Bighorn Battlefield National Monument.

DATES: Any other individuals who believe they are lineal descendants of the individual who owned these sacred objects who wish to claim the items should contact Little Bighorn Battlefield National Monument at the address below by January 23, 2012.

ADDRESSES: Kate Hammond, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022–0039, telephone (406) 638–3201.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Little Bighorn Battlefield National Monument.

History and Description of the Cultural Items

The two cultural items are an eagle bone whistle and a tanned deer hide skirt. A white eagle plume feather and sage are attached to the whistle with sinew strips and ribbon. The skirt is fastened together with leather thongs and traces of black and red earth paint are visible on the leather. In 1967, the whistle and the skirt were purchased from James Little Bird by the Custer Battlefield Historic Museum Association and later donated to Little Bighorn Battlefield National Monument.

Lloyd Littlebird, Sr., son of James Little Bird, is requesting repatriation of the two cultural items described above. The two items are needed by Mr. Littlebird to continue traditional ceremonies. The Northern Cheyenne Cultural Commission and Tribal Historic Preservation Office corroborated Little Bighorn Battlefield National Monument's determination that Lloyd Littlebird, Sr. is the most appropriate recipient under the Northern Cheyenne traditional kinship system and common law system of descendance.

Determinations Made by Little Bighorn Battlefield National Monument

Officials of Little Bighorn Battlefield National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the two cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3005(a)(5)(A), Mr. Littlebird is the direct lineal descendant of the individual who owned these sacred objects.

Additional Requestors and Disposition

Any other individuals who believe they are lineal descendants of the individual who owned these sacred objects and who wish to claim the items should contact Kate Hammond, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022–0039, telephone (406) 638–3201, before January 23, 2012. Repatriation of the sacred objects to Mr. Lloyd Littlebird, Sr. may proceed after that date if no additional claimants come forward.

Little Bighorn Battlefield National Monument is responsible for notifying Mr. Lloyd Littlebird, Sr.; Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne-Arapaho Tribes of Oklahoma); Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–33008 Filed 12–22–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Little Bighorn Battlefield National Monument, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of sacred objects and repatriation to the lineal descendant stated below may occur if no additional claimants come forward. Any other individuals who believe they are lineal descendants of the individual who owned these sacred objects and who wish to claim the items should contact Little Bighorn Battlefield National Monument.

DATES: Any other individuals who believe they are lineal descendants of the individual who owned these sacred objects and who wish to claim the items should contact Little Bighorn Battlefield National Monument at the address below by January 23, 2012.

ADDRESSES: Kate Hammond, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022–0039, telephone (406) 638–3201.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Little Bighorn Battlefield National Monument.

History and Description of the Cultural Items

The two cultural items are a necklace adorned with red polished seeds resembling berries, a snapping turtle tail, red pipestone, buckskin bags, and two arrowheads; and a buffalo fur hat lined with cotton print fabric. The items belonged to Charles Limpy and his wife, who resided on the Northern Cheyenne reservation. In 1922, Mr. Limpy and his wife traded or gifted the two items to Dr. Thomas B. Marquis, a physician on the Tongue River Reservation (Northern Cheyenne). In 1942, the two objects were donated to Custer Battlefield National Cemetery, now known as Little Bighorn Battlefield National Monument, by Dr. Marquis' daughters, Mrs. Millie Ellen Marquis Hastings and Mrs. Anna Rose Octavia Marquis Heil.

Eugene Limpy, great-grandson of Charles Limpy, is requesting repatriation of the cultural items described above. The necklace and hat are needed by Mr. Limpy to continue traditional ceremonies. The Northern Cheyenne Cultural Commission and Tribal Historic Preservation Office corroborated Little Bighorn Battlefield National Monument's determination that Eugene Limpy is the most appropriate recipient under the Northern Cheyenne traditional kinship system and common law system of descendance.

Determinations Made by Little Bighorn Battlefield National Monument

Officials of Little Bighorn Battlefield National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the two cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3005(a)(5)(A), Mr. Eugene Limpy is the direct lineal descendant of the individual who owned these sacred objects.

Additional Requestors and Disposition

Any other individuals who believe they are lineal descendants of the individual who owned these sacred objects and who wish to claim the items should contact Kate Hammond, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022–0039, telephone (406) 638–3201, before January 23, 2012. Repatriation of the sacred objects to Mr. Eugene Limpy may proceed after that date if no additional claimants come forward.

Little Bighorn Battlefield National Monument is responsible for notifying Mr. Eugene Limpy; the Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne-Arapaho Tribes of Oklahoma); Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska;

Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–32975 Filed 12–22–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: University of Michigan Museum of Anthropology, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Michigan has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the University of Michigan, Office of the Vice President for Research. Disposition of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the University of Michigan, Office of the Vice President for Research at the address below by January 23, 2012.

ADDRESSES: Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of the Vice President for Research, 4080 Fleming Building, 503 Thompson St., Ann Arbor, MI 48109–1340, telephone (734) 647–9085.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Michigan. The human remains and associated funerary objects were removed from private land near Pleasant Lake in Lapeer County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by University of Michigan officials and its Museum of Anthropology professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians of Michigan (hereinafter referred to as ''The Tribes'').

Additional requests for consultation were sent to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Ottawa Tribe of Oklahoma; Prairie Band of Potawatomi Nation, Kansas; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of the Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation, Oklahoma.

History and Description of the Remains

In the summer of 1973, human remains representing at minimum, 120 individuals, were removed from the Fisher Site in Lapeer County, MI, during construction of a private home. The landowner contacted the Michigan Archaeological Society and they reached an agreement to spend one month salvaging the site. Those individuals excavating the site encountered a total of eight burial pits with large red ochre deposits. The burial pits contained human remains exhibiting various mortuary treatments, including secondary inhumation, probable primary burial, and cremation. One burial pit (Feature 8) was pedestalled, removed in large blocks, and stored at a private residence for later disaggregation in a controlled laboratory setting. In 1995, the human remains were transferred from the private residence to the University of Michigan, where they were accessioned into the Museum of Anthropology. Between 2007 and 2009 the remains were inventoried at the University of Michigan and those remains from Feature 8 were excavated from the red ochre soil matrix that had been pedestalled and removed from the Site. Human remains representing a minimum of 120 individuals were recorded from the eight burial pits. No known individuals were identified. The 219 objects recovered from the burial site are: 1 Stone abrader, 64 faunal bones, 45 fragments of charcoal, 8 eroded daub fragments, 8 pieces of fire cracked rock, 76 chert flakes, 2 grit-tempered ceramic sherds, 7 jars of soil, 5 red ochre samples, and 3 unworked shell fragments.

The Fisher Site is dated to the Late Archaic period (2250–850 B.C.) based on funerary practices and the extensive use of red ochre in the burial puts. Carbon–14 dating was attempted on four charcoal samples, but the results were inconclusive.

Determinations Made by the University of Michigan

Officials of the University of Michigan have determined that:

- Based on archeological evidence, cranial morphology, dental traits, and pre-contact burial dates, the human

remains are determined to be Native American.

• Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.

• According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Saginaw Chippewa Indian Tribe of Michigan.

• Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation, Kansas; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of the Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation, Oklahoma.

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 120 individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the 219 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of the Vice President for Research, 4080 Fleming Building, 503 Thompson St., Ann Arbor, Michigan 48109–1340, telephone (734) 647–9085, before January 23, 2012. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The University of Michigan's Office of the Vice President for Research is responsible for notifying the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation, Kansas; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of the Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation, Oklahoma that this notice has been published.

Dated: December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–32954 Filed 12–22–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Field Museum of Natural History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Field Museum of Natural History. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Field Museum of Natural

History at the address below by January 23, 2012.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Field Museum of Natural History, Chicago, IL (Field Museum). The human remains and associated funerary objects were removed from Fresno, Kings, and Madera Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Field Museum professional staff in consultation with representatives of the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and the Tule River Indian Tribe of the Tule River Reservation, California (hereinafter referred to as ''The Tribes'').

History and Description of the Remains

In March 1901, human remains representing, at minimum, six individuals (catalog numbers 42707–42709, 42713) were removed from unknown locations in Squaw Valley, near Sanger in Fresno County, CA, by John Hudson. No known individuals were identified. The two associated funerary objects are a child's basket (catalog number 70830) and an abalone shell comprised of one larger piece of shell and its fragments.

On an unknown date in 1901, human remains representing, at minimum, three individuals (catalog numbers 42710–42712) were removed from unknown locations in Hanford, Kings County and Raymond, Madera County, CA, by Mr. Hudson. No known individuals were identified. No associated funerary objects are present.

These human remains have been identified as Native American based on the specific cultural and geographic attribution in Field Museum records. The records identify the human remains as ''Mariposan'' or ''Yokuts'' from Sanger, Hanford and Raymond, CA. ''Yokuts'' descendents in California are represented by The Tribes.

Determinations Made by the Field Museum of Natural History

Officials of the Field Museum have determined that:

- Pursuant to 25 U.S.C. 3001 (9), the human remains described above represent the physical remains of nine individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001 (3)(A), the two objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and The Tribes.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, before January 23, 2012. Repatriation of the human remains and associated funerary objects to The Tribes may begin after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying The Tribes that this notice has been published.

Dated: December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–32963 Filed 12–22–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Alaska State Office, Bureau of Land Management, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Alaska State Office, Bureau of Land Management has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Alaska State Office, Bureau of Land Management. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Alaska State Office, Bureau of Land Management, at the address below by *January 23, 2012.*

ADDRESSES: Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, Box 13, Anchorage, AK 99513–7599, telephone (907) 271–5510.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Bureau of Land Management (BLM) that are housed at the Field Museum of Natural History, Chicago, IL (Field Museum). The human remains were removed from Cherni Island, Aleutians East Borough, AK, in 1952, which was managed by the BLM at that time. The human remains have since been stored at the Field Museum.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Alaska State Office, BLM professional staff in consultation with representatives of Agdaagux Tribe of King Cove; Native Village of Belkofski; Native Village of False Pass; Native Village of Nelson Lagoon; Pauloff Harbor Village; Qagan Tayagungin Tribe of Sand Point Village; and the Native Village of Unga (hereinafter referred to as ''The Tribes'').

History and Description of the Remains

In 1952, human remains representing a minimum of one individual were removed from Cherni Island, AK. According to Field Museum records, the human remains were removed by Robert

Jones, Jr. of Cold Bay, AK, a biologist with the U.S. Fish and Wildlife Service, and presented to the museum in 1953. The human remains were subsequently stored by the museum and remain at that facility. In 2008, in an effort to determine control of the human remains, the Field Museum contacted the Alaska State Office, BLM concerning ownership of Cherni Island in 1952. Based on BLM land records, the land from which the remains were collected was under BLM management in 1952, and had been until 1984, when the lands were conveyed to Native Alaskan allottees. Because the land was managed by the BLM at the time the human remains were collected, the Alaska State Office, BLM assumed control of the collection for the purposes of NAGPRA. No known individuals were identified. No associated funerary objects are present.

Based on geographical location, condition, and morphology, the human remains are determined to be Native American. Cherni Island is a small, presently uninhabited, island located about 25 miles south of King Cove, AK, in the Aleutians East Borough. Due to the continuity of populations for thousands of years in the eastern Aleutian Islands, as demonstrated by archeological studies and oral traditions, the human remains represent an individual likely to be directly related to Native American tribal members who reside today in the same geographic location.

Determinations Made by the Alaska State Office, Bureau of Land Management

Officials of the Alaska State Office, BLM have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and members of The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, Box 13, Anchorage, AK 99513–7599, telephone (907) 271–5510, before January 23, 2012. Repatriation of the human remains to The Tribes may proceed after that date if no additional claimants come forward.

The Alaska State Office, Bureau of Land Management is responsible for notifying The Tribes that this notice has been published.

Dated: December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–33016 Filed 12–22–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

[2253–665]

National Park Service

Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Minnesota Indian Affairs Council has completed an inventory of human remains in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Minnesota Indian Affairs Council. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Minnesota Indian Affairs Council at the address below by January 23, 2012.

ADDRESSES: James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Minnesota Indian Affairs Council, Bemidji, MN. The human remains were removed from unknown locations in the State of Minnesota.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Minnesota Indian Affairs Council (MIAC) professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Flandreau Santee Sioux Tribe of South Dakota; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Lower Sioux Indian Community in the State of Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereinafter referred to as ''The Tribes'').

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an undesignated location in the State of Minnesota by unknown persons(s). In the 1930s, Malcolm McLean, a Dean at the University of Minnesota donated the human remains to the University of Minnesota (Acc. UM83). In 1989, the human remains were transferred to the MIAC. No known individuals were identified. No associated funerary objects are present.

The condition of the remains and dental morphology identify these human remains as pre-contact American

Indian. The remains have no specific context or archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, one individual were removed from an undesignated location in the State of Minnesota by unknown person(s) and given to an antique dealer in Mankato, MN who transferred the remains to the Minnesota Office of the State Archaeologist in 1990. The human remains were then transferred to the MIAC in the same year (H180). No known individuals were identified. No associated funerary objects are present.

The condition of the remains and cranial morphology identify these human remains as pre-contact American Indian. The human remains have no specific context or archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, one individual were removed from an undesignated location in the State of Minnesota by unknown person(s) and reportedly used for anatomical study by a medical student. In 1991, the human remains were donated to the MIAC (H191). No known individuals were identified. No associated funerary objects are present.

The condition of the remains and cranial morphology identify these human remains as pre-contact American Indian. The human remains have no specific context or archeological classification and cannot be associated with any present-day Indian tribe.

At unknown dates, human remains representing, at minimum, seven individuals were removed from undesignated locations in the State of Minnesota by unknown persons and donated to the Science Museum of Minnesota. Between 1993 and 1994, the human remains were transferred to the MIAC (H228, H230, H255, H281). No known individuals were identified. No associated funerary objects are present.

The condition of the remains and cranial morphology identify these human remains as pre-contact American Indian. The human remains have no specific context or archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, one individual were removed from an undesignated location in the State of Minnesota by unknown person(s) and donated to the Minnesota Historical Society (Box#961N#31). In 1993, the human remains were transferred to the MIAC (H244). No known individual was identified. No associated funerary objects are present.

The condition of the remains suggests an ancient, pre-contact burial, and therefore probably American Indian affiliation. The human remains have no specific context or archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, two individuals were removed from an undesignated location in the State of Minnesota by unknown person(s) and donated to the Minnesota Historical Society (no Acc. # assigned). In 1994, the human remains were transferred to the MIAC (H251). No known individuals were identified. No associated funerary objects are present.

The condition of the remains, cranial morphology and dental attrition identify these human remains as pre-contact American Indian. The human remains have no specific context or archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, one individual were removed from an undesignated location in the State of Minnesota by unknown person(s) and donated to the Science Museum of Minnesota (Acc.164, 1–1501) by Dr. Mason Allen. In 1994, the human remains were transferred to the MIAC (H256). No known individuals were identified. No associated funerary objects are present.

The condition of the remains and cranial morphology identify these human remains as pre-contact American Indian. The human remains have no specific context or archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, two individuals were removed from an undesignated location in the State of Minnesota by unknown person(s) and donated to the Science Museum of Minnesota. In 1994, the human remains were transferred to the MIAC (H261). No records were associated with the transfer of these human remains from the Science Museum of Minnesota. The bones are marked as follows: ''A–E SE MINN.'' No known individuals were identified. No associated funerary objects are present.

The condition of the remains and the purported context identify these human remains as probably pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, one individual were removed from an undesignated location in the State of Minnesota by unknown person(s). In 1996, the human remains were discovered in the basement rafters of a private residence in Brainerd, MN. The remains had been modified with the addition of non-human glass eyes. The human remains were recovered by the Brainerd Police Department/Crow Wing County Sheriff and then transferred to the Minnesota Office of the State Archaeologist and then to the MIAC (H302). No known individuals were identified. No associated funerary objects are present.

The condition of the remains and cranial morphology identify these human remains as pre-contact American Indian. The human remains have no specific context or archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, five individuals were removed from undesignated locations in the State of Minnesota by unknown person(s) and donated to the Minnesota Historical Society. In 1987, the human remains were transferred to the MIAC (H319.44A). No records were associated with the transfer of these human remains from the Minnesota Historical Society. A note in the box states: ''Found with wrapping of the St. Paul Daily News Nov. 25th (Sat) 1911.'' Bags that contained the human remains were marked as MHS Unknown #1. No known individuals were identified. No associated funerary objects are present.

The condition of the remains, including the presence of red ochre staining, cranial morphology, and dental morphology identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, four individuals were removed from undesignated locations in the State of Minnesota by unknown person(s) and donated to the Minnesota Historical Society. In 1987, the human remains were transferred to the MIAC (H319.44B). No records were associated with the transfer of these human remains from the Minnesota Historical Society. Bags that contained the human remains were marked as MHS Unknown #2. No known individuals were identified. No associated funerary objects are present.

The condition of the remains, cranial morphology, and dental morphology identify these human remains as pre-contact American Indian. The remains include a Woodland style projectile point embedded into a vertebra; this point was likely the cause of death of the individual, as no evidence of healing is present. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In the early 1970s, human remains representing, at minimum, two individuals were removed from undesignated locations in the State of Minnesota by unknown person(s) and donated to the Minnesota Historical Society (Acc. 1972–1–1 and 1972–2–1). In 1987, the human remains were transferred to the MIAC (H319.45). No records were associated with the transfer of these human remains from the Minnesota Historical Society. A note in the box states: ''* * * from 1972 museum display.'' Bags that contained the human remains were marked as MHS Unknown #3. No known individuals were identified. No associated funerary objects are present.

The condition of the remains and dental morphology identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, 11 individuals were removed from undesignated locations in the State of Minnesota by unknown person(s) and donated to the Minnesota Historical Society. In 1987, the human remains were transferred to the MIAC (H319.46). No records were associated with the transfer of these human remains from the Minnesota Historical Society. The human remains were transferred in Minnesota Historical Society Museum Box AY6–A–2–5. These human remains were in bags labeled only as MHS Unknown A, MHS Unknown B, MHS Unknown C. No known individuals were identified. No associated funerary objects are present.

The condition of the human remains, cranial morphology, dental morphology and dental patterns of attrition identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing one individual were removed from an undesignated archeological site in western Minnesota. The human remains were given to a private citizen. In 1995, the brother of the private citizen donated the human remains to the South Dakota State Archaeological Research Center (Acc. #96–109). In 1996, the human remains were transferred to the Minnesota Office of the State Archaeologist. In 1997, the human remains were transferred to the MIAC (H329). No known individuals were identified. No associated funerary objects are present.

The condition of the remains, including the presence of red ochre staining and cranial morphology identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At unknown dates, human remains representing, at minimum, ten individuals were removed from undesignated locations in the State of Minnesota by unknown persons and donated to the University of Minnesota. In 1998, the human remains were transferred to the MIAC (H338, H343, H344). No known individuals were identified. No associated funerary objects are present.

The condition of the remains and cranial morphology identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, one individual were removed from an undesignated location in the State of Minnesota by unknown person(s) and donated to the University of Minnesota. In 1998, the human remains were transferred to the MIAC (H342). No known individuals were identified. No associated funerary objects are present.

The condition of the remains, including the presence of red ochre, and cranial morphology identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At unknown dates, human remains representing, at minimum, 16 individuals were removed from undesignated locations in the State of Minnesota by unknown persons and donated to the University of Minnesota. In 1998, the human remains were transferred to the MIAC (H345, H347, H349). No known individuals were identified. No associated funerary objects are present.

The condition of the remains, cranial morphology and dental morphology identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, one individual were removed from an undesignated location in the State of Minnesota by unknown person(s) and donated to the University of Minnesota. In 1998, the human remains were transferred to the MIAC (H346). No known individuals were identified. No associated funerary objects are present.

The condition of the remains, cranial morphology and femora morphology identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At unknown dates, human remains representing, at minimum, three individuals were removed from undesignated locations in the State of Minnesota by unknown person(s) and donated to the University of Minnesota. In 1998, the human remains were transferred to the MIAC (H350). No known individuals were identified. No associated funerary objects are present.

The condition of the remains, cranial morphology, dental morphology and femora morphology identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, one individual were removed from an undesignated location in the State of Minnesota by unknown person(s) and donated to the Science Museum of Minnesota (SMM Number: 1–1502, A; Acc: 8). In 1999, the human remains were transferred to the MIAC (H351). No known individuals were identified. No associated funerary objects are present.

The condition of the remains, cranial morphology and dental morphology identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, three individuals were removed from an undesignated location in the State of Minnesota by unknown person(s). In the early 1970s, C. Watrall donated the remains to the University of Regina, Saskatchewan, where he was an associate professor. In 1999, the human remains were transferred to the Minnesota Office of the State Archaeologist. In 2002, the human

remains were transferred to the MIAC (H382). Records with the transfer from the University of Regina, Saskatchewan report that catalogue entries identify the donated remains as originating from Minnesota but do not provide any information regarding recovery location, archaeological context, or cultural affiliation. No known individuals were identified. No associated funerary objects are present.

The condition of the remains, cranial morphology and femora morphology identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, three individuals were recovered from an unknown site in the State of Minnesota by unknown person(s). In 2008, these human remains were transferred by a private citizen to the cultural director of the Shakopee Medewakaton community who transferred the human remains to the MIAC (H439).

The condition of the human remains suggests an ancient, pre-contact time period association. The cranial morphology and femora morphology identify these human remains as American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

Determinations Made by the Minnesota Indian Affairs Council

Officials of the MIAC have determined that:

- Based on non-destructive physical analysis and catalogue records, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 78 individuals of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before January 23, 2012. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The Minnesota Indian Affairs Council is responsible for notifying The Tribes that this notice has been published.

Dated: December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–32980 Filed 12–22–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Minnesota Indian Affairs Council has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Minnesota Indian Affairs Council. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Minnesota Indian Affairs Council at the address below by January 23, 2012.

ADDRESSES: James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Minnesota Indian Affairs Council. The human remains were removed from Clay and Ottertail Counties, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Minnesota Indian Affairs Council (MIAC) professional staff in consultation with representatives of the Flandreau Santee Sioux Tribe of South Dakota; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Lower Sioux Indian Community in the State of Minnesota; Minnesota Chippewa Tribe, Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Upper Sioux Community, Minnesota; and the White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereinafter referred to as ''The Tribes'').

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed by unknown person(s) from a gravel pit on the farm of Earl Mallinger in Barnesville, Clay County, MN. The human remains were donated to the University of Minnesota in 1964, and accessioned as UM549. In 1966, the human remains were transferred to the Clay County Historical Society (Acc. 66.36) and in 1986, they were transferred to the MIAC (H113–4). No known individuals were identified. No associated funerary objects are present.

The condition of the human remains and cranial morphology identify these human remains as pre-contact American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1939, human remains representing, at minimum, one individual were recovered from a gravel pit in Ottertail County, MN, by a Works Progress Administration crew and were transferred to the University of Minnesota (UM222). In 1989, the human remains were transferred to the MIAC. No known individuals were identified. No associated funerary objects are present.

The context of this burial and the condition of the remains identify these human remains as pre-contact American Indian. These human remains have no

archeological classification and cannot be associated with any present-day Indian tribe.

In the 1930s, human remains representing, at minimum, one individual were removed from a gravel pit near Tenney, in Ottertail County, MN, during construction of a railway. The human remains were purportedly reburied, except for the skull fragments, which were donated to the owner of a local bar. After the death of the bar owner, the reconstructed skull was reburied near Big Pine Lake. In 2009, the same skull was recovered during power line construction on residential property on Big Pine Lake. The human remains were transferred into the custody of the Ottertail County Sheriff's Office and from there to the MIAC (H442). No known individuals were identified. No associated funerary objects are present.

Cranial morphology identifies these human remains as American Indian. The lack of context resulting from removal, reburial and re-removal make it difficult to determine a date for the remains. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

Determinations Made by the Minnesota Indian Affairs Council

Officials of the MIAC have determined that:

- Based on non-destructive physical analysis and catalogue records, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before January 23, 2012. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The Minnesota Indian Affairs Council is responsible for notifying The Tribes that this notice has been published.

Dated: December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–32977 Filed 12–22–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Minnesota Indian Affairs Council has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Minnesota Indian Affairs Council. Disposition of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Minnesota Indian Affairs Council at the address below by January 23, 2012.

ADDRESSES: James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indian Affairs Council (MIAC). The human remains and associated funerary objects were removed from Kittson, Lake of the Woods and Roseau Counties, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the MIAC professional staff in consultation with representatives of the Red Lake Band of Chippewa Indians, Minnesota and the Turtle Mountain Band of Chippewa Indians of North Dakota.

History and Description of the Remains

At an unknown date, human remains representing, at minimum, four individuals were removed from an undesignated site in Kittson County, MN, by K. Lund of Karlstad, MN. In 1976, the human remains were donated to the Minnesota Historical Society (Acc. 184–6). In 1987, the human remains were transferred to the MIAC (H319.27B). No known individuals were identified. No associated funerary objects are present.

The condition of the human remains and cranial morphology identify these human remains as pre-contact American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human representing, at minimum, one individual were removed from an area 400 feet offshore from 21LW6, Fort St. Charles in Lake of the Woods County, MN, by divers working for the Minnesota Historical Society. The human remains were donated to the Minnesota Historical Society (Acc. 388–47). In 1993, the human remains were transferred to the MIAC (H226). No known individuals were identified. The one associated funerary object is a preform tool made from a grooved and split antler beam.

The condition and context of the human remains identify these human remains as pre-contact American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1937, human remains representing, at minimum, two individuals were removed from the O. Erickson farm, site 21–RO–28, in Malung, Roseau County, MN, by A. Erickson and donated to the Roseau County Historical Society (Acc. 13E). In 1995, the human remains were transferred to the Minnesota Office of

the State Archaeologist by D. Nysteun of the Minnesota Historical Society, and in 1997, they were transferred to the MIAC (H325). No known individuals were identified. No associated funerary objects are present.

The condition of the human remains and femora morphology identify these remains as pre-contact American Indian. Records at the Roseau County Historical Society including a publication entitled, ''The North Land—A History of Roseau County'' report the presence of twelve arrowheads near the skeleton. These items were not included with the transfer of the human remains. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1969, human remains representing, at minimum, one individual were recovered from Roseau, site 21–RO–29, in Roseau County, MN, during a water trench construction project and transferred to the Roseau County Historical Society (Acc. 14E). In 1995, the human remains were transferred to the Minnesota Office of the State Archaeologist by D. Nysteun, and in 1997, they were transferred to the MIAC (H326). No known individuals were identified. No associated funerary objects are present.

The condition of the human remains and cranial morphology identify these remains as pre-contact American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, seven individuals were recovered from an unknown location in Roseau County, MN, by unknown person(s) and donated to the Roseau County Historical Society in 1995 (Accs. 573A, 574A, 576A). In 1995, the human remains were transferred to the Minnesota Office of the State Archaeologist by D. Nysteun, and in 1997, they were transferred to the MIAC (H328). No known individuals were identified. No associated funerary objects are present.

The condition of the human remains, including red ochre staining, and cranial morphology identify these human remains as pre-contact American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

Determinations Made by the Minnesota Indian Affairs Council

Officials of the MIAC have determined that:

- Based on non-destructive physical analysis and catalogue records, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Red Lake Band of Chippewa Indians, Minnesota and the Turtle Mountain Band of Chippewa Indians of North Dakota.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 15 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Red Lake Band of Chippewa Indians, Minnesota and the Turtle Mountain Band of Chippewa Indians of North Dakota.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before January 23, 2012. Disposition of the human remains to the Red Lake Band of Chippewa Indians, Minnesota and the Turtle Mountain Band of Chippewa Indians of North Dakota may proceed after that date if no additional requestors come forward.

The Minnesota Indian Affairs Council is responsible for notifying the Red Lake Band of Chippewa Indians, Minnesota and the Turtle Mountain Band of Chippewa Indians of North Dakota that this notice has been published.

Dated: December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–32971 Filed 12–22–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Minnesota Indian Affairs Council has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Minnesota Indian Affairs Council. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Minnesota Indian Affairs Council at the address below by January 23, 2012.

ADDRESSES: James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Minnesota Indian Affairs Council (MIAC). The human remains were removed from Koochiching County, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the MIAC professional staff in consultation with representatives of the Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe,

Minnesota; Red Lake Band of Chippewa Indians, Minnesota; and the White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereinafter referred to as ''The Tribes'').

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an undesignated site in Koochiching County, MN, by unknown persons. In 1998, the human remains were donated to Tom Trow at the University of Minnesota, who transferred them to the Minnesota Office of the State Archaeologist. In 1999, the human remains were transferred to the MIAC (H373). No known individuals were identified. No associated funerary objects are present.

The condition of the human remains and cranial morphology identify these human remains as pre-contact American Indian. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

Determinations Made by the Minnesota Indian Affairs Council

Officials of the MIAC have determined that:

- Based on non-destructive physical analysis and catalogue records, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before January 23, 2012. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The Minnesota Indian Affairs Council is responsible for notifying The Tribes that this notice has been published.

Dated: December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–32967 Filed 12–22–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO. The human remains and cultural items were removed from Maricopa County or Pinal County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of associated funerary objects for the Hill Ruin and Gila Plain Sites.

In the **Federal Register** (66 FR 55957–55958, Monday, November 5, 2001) paragraph number four is corrected by substituting the following paragraph:

Around 1925, human remains representing, at minimum, one individual were recovered from the Hill Ruin Site in either Maricopa or Pinal County, AZ, by archeologist Frank Midvale. At an unknown date, the remains were transferred to Fallis F. Rees, who donated them to the University of Denver Department of Anthropology and Museum of Anthropology in 1967. No known individuals were identified. The 283 associated funerary objects are: 1 Sacaton Red-on-Buff bowl, 1 Sacaton Red-on-Buff bowl fragment, 280 Sacaton phase and Santa Cruz phase projectile points, and 1 lot of calcined shell beads strung on twine.

Paragraph number six is corrected by substituting the following paragraph:

At an unknown date, human remains representing, at minimum, one individual were recovered from an unknown site in the Gila Plain, in either Maricopa or Pinal County, AZ, by an unknown person. The remains were cremated and are in fragmentary condition. At an unknown date, the remains came into the possession of Fallis F. Rees, who donated them to the University of Denver Department of Anthropology and Museum of Anthropology in 1967. No known individuals were identified. The eight associated funerary objects are: 1 plainware ''cremation'' bowl, 1 ''cremation'' olla, 2 buff ceramic rim sherds, 1 piece of cut and decorated mica, 1 shell fragment, 1 possible shell bracelet, and 1 lot of fragmented faunal remains.

Paragraph number ten is corrected by substituting the following paragraph:

Officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that:

- Pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of, at minimum, two individuals of Native American ancestry.
- Pursuant to 43 CFR 10.2(d)(2), the 291 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico (herein after referred to as ''The Tribes'').

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Anne Amati, NAGPRA Coordinator/Registrar, University of Denver Department of Anthropology and Museum of Anthropology, 2000 E Asbury Ave. Sturm Hall 146, Denver,

CO 80208, telephone (303) 871–2687, before January 23, 2012. Repatriation of the human remains and associated funerary objects to The Tribes may proceed after that date if no additional claimants come forward.

The University of Denver Department of Anthropology and Museum of Anthropology is responsible for notifying The Tribes that this notice has been published.

Dated December 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–32946 Filed 12–22–11; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–710]

Certain Personal Data and Mobile Communications Devices and Related Software; Final Determination Finding Violation of Section 337; Issuance of a Limited Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has issued a limited exclusion order prohibiting importation of infringing personal data and mobile communications devices and related software. The Commission has determined that exclusion of articles subject to this order shall commence on April 19, 2012.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 6, 2010, based on a complaint filed by Apple Inc., and its subsidiary NeXT Software, Inc., both of Cupertino, California (collectively, ''Apple''), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain personal data and mobile communications devices and related software that infringe certain U.S. patents. 75 FR 17434 (Apr. 6, 2010). The notice of investigation named as respondents High Tech Computer Corp. of Taoyuan City, Taiwan and its United States subsidiaries HTC America Inc. of Bellevue, Washington, and Exedia, Inc. of Houston, Texas (collectively, ''HTC'').

Several patents that had been asserted by Apple in this investigation were earlier asserted by Apple in Investigation No. 337–TA–704 against Nokia Corp. of Espoo, Finland and Nokia Inc. of White Plains, New York (collectively, ''Nokia''). On motion by the Commission investigative attorney (''IA'') in the 704 investigation and by the respondents in both investigations, the Chief ALJ transferred Apple's assertion of overlapping patents against Nokia from the 704 investigation into the 710 investigation. *See* Inv. No. 337–TA–704, Order No. 5 (Apr. 26, 2010). However, Apple and Nokia entered a settlement agreement, and on July 21, 2011, the Commission determined not to review the presiding ALJ's termination of the investigation as to Nokia in the 710 investigation based on settlement.

On July 15, 2011, the ALJ issued the final ID. By that time, the investigation had narrowed to certain claims of four patents: claims 1, 3, 8, 15, and 19 of U.S. Patent No. 5,946,647 (''the '647 patent''); claims 1, 2, 24, and 29 of U.S. Patent No. 6,343,263 (''the '263 patent''); claims 1, 5, and 6 of U.S. Patent No. 5,481,721 (''the '721 patent''); and claims 1 and 7 of U.S. Patent No. 6,275,983 (''the '983 patent''). The final ID found a violation of section 337 by HTC by virtue of the infringement of claims 1, 8, 15, and 19 of the '647 patent, and claims 1, 2, 24, and 29 of the '263 patent. The final ID found that claim 3 of the '647 patent was not infringed. In addition, the final ID found that Apple had demonstrated neither infringement nor Apple's own practice (for purposes of establishing the existence of a domestic industry) of claims 1, 5, and 6 of the '721 patent and claims 1 and 7 of the '983 patent. The final ID concluded that HTC had not demonstrated that any of the asserted patent claims were invalid. The ALJ recommended the issuance of a limited exclusion order but that zero bond be posted during the Presidential review period.

HTC, Apple, and the IA each petitioned for review of the final ID. On September 15, 2011, the Commission determined to review several issues regarding each of the four patents asserted in this investigation. 76 FR 58,537 (Sept. 21, 2011). The parties filed briefing on the issues under review, remedy, the public interest, and bonding. In addition, the following non-parties submitted comments on the public interest: the Association for Competitive Technology; Google Inc.; and T–Mobile USA., Inc. (''T–Mobile'').

Having examined the record of this investigation, including the ALJ's final ID and the aforementioned briefing and comments, the Commission has determined that there is a violation of section 337 by reason of the importation and sale of articles that infringe claims 1 and 8 of the '647 patent. The Commission has determined to reverse the ALJ's finding of violation as to claims 15 and 19 of the '647 patent and as to the asserted claims of the '263 patent. The Commission affirms the ALJ's conclusion that there has been no violation as to the '721 and '983 patents.

The Commission has further determined that the appropriate remedy is a limited exclusion order prohibiting the entry of personal data and mobile communications devices and related software that infringe claims 1 or 8 of the '647 patent. The Commission has also determined that the public interest factors enumerated in section 337(d), 19 U.S.C. 1337(d), do not preclude the issuance of the limited exclusion order. Notwithstanding the foregoing, the Commission has determined that based on consideration of competitive conditions in the United States economy, the exclusion of articles subject to the order shall commence on April 19, 2012 to provide a transition period for U.S. carriers. In addition, the Commission has determined, based on consideration of the effect of exclusion on United States consumers, that until December 19, 2013, HTC may import refurbished handsets to be provided to consumers as replacements under warranty or an insurance contract (whether the warranty or contract is offered by HTC, a carrier, or by a third party). This exemption does not permit HTC to call new devices ''refurbished'' and to import them as replacements. The Commission has determined not to issue a cease and desist order and that

zero bonding is required during the period of Presidential review, 19 U.S.C. 1337(j). The investigation is terminated.

The Commission's order and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

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).

By order of the Commission.

Issued: December 19, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–32869 Filed 12–22–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0004]

Agency Information Collection Activities; Proposed collection; Comments Request: Alien's Change of Address Form: 33/BIA Board of Immigration Appeal; 33/IC Immigration Court

ACTION: 30 Day Notice of Information Collection under Review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 201, page 64377, on October 18, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may also be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Alien's Change of Address Forms 33/BIA Board of Immigration Appeals and 33/IC Immigration Court.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: Forms EOIR 33/BIA and 33/IC. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: An individual appearing before the Immigration Court or the Board of Immigration Appeals. Other: None. Abstract: The information on the change of address form is used by the Immigration Courts and the Board of Immigration Appeals to determine where to send notices of the next administrative action or of any decisions in an alien's case.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 15,000 respondents will complete the form once annually with an average of 5 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,245 total burden hours associated with this collection annually.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–32904 Filed 12–22–11; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 16, 2011, a proposed Consent Decree (the ''Decree'') in *United States* v. *Allied Waste of Puerto Rico, Inc., Motorola Electronica de Puerto Rico, Inc., and Pfizer, Inc.,* 3:11–cv–2218, was lodged with the United States District Court for the District of Puerto Rico.

In a complaint, filed simultaneously with the Decree, the United States alleges claims against each of the defendants, Allied Waste of Puerto Rico, Inc., Motorola Electronica de Puerto Rico, Inc., and Pfizer, Inc. (the ''Defendants''), with respect to the Vega Baja Solid Waste Disposal Superfund Site (''Site'') for injunctive relief pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (''CERCLA''), 42 U.S.C. 9606(a), response costs incurred by the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and future response costs that may be incurred by the Plaintiff at the Site in the future, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2).

Pursuant to the Decree, the Defendants will: (1) Implement the remedial action at the Site contained in the Operable Unit 2 Record of Decision which includes soil removal and remediation to address lead contamination; (2) aid in the development of institutional controls and operation and maintenance provisions that will be protective of the remedy; (3) pay EPA's future oversight costs; and (4) pay $1.5 million for past response costs incurred by the United States at the Site.

The Department of Justice will receive, for a period of thirty (30) days

from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Allied Waste of Puerto Rico, Inc., Motorola Electronica de Puerto Rico, Inc., and Pfizer, Inc.,* DJ Ref. No. 90–11–3–07244.

During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $33.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–32870 Filed 12–22–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 15, 2011, a proposed Consent Decree (''proposed Decree'') in *United States* v. *CalPortland Company,* Civil Action No. 1:11–at–00790, was lodged with the United States District Court for the Eastern District of California, Fresno Division.

In this action under Sections 113(b) and 167 of the Clean Air Act, 42 U.S.C. 7413(b) and 7477, the United States seeks injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Clean Air Act, 42 U.S.C. 7470–7492, the PSD regulation set forth at 40 CFR 52.21, and Title V of the Clean Air Act, 42 U.S.C. 7661–7661f, and Title V's implementing federal and state regulations, at a portland cement manufacturing plant located near Mojave, California.

The proposed Decree resolves the United States' claims against CalPortland Company (''Defendant'') by requiring Defendant to install and operate appropriate emission controls at its kiln, and requires Defendant to pay a civil penalty of $1,425,000 to the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *CalPortland Company,* D.J. Ref. No. 90–5–2–1–08306/2.

The proposed Decree may be examined at the office of the United States Attorney's Office, Eastern District of California, 501 I Street, Suite 10–100, Sacramento, California 95814, and at the United States Environmental Protection Agency, Region IX, *attention:* Chief, Air Enforcement Office, 75 Hawthorne Street, AIR–5, San Francisco, California 94105. During the public comment period, the proposed Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent Decrees.html.* A copy of the proposed Decree may also be obtained via U.S. mail by making a written request to the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097 (phone confirmation number (202) 514–1547). In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $15.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, please forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–32974 Filed 12–22–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0020]

Agency Information Collection Activities; Proposed Collection: Emergency Request for Approval of Collection of Information Under Review Firearms Transaction Record, Part 1, Over-the-Counter

ACTION: Emergency 60-day notice.

The Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995 (''the Act''). OMB approval will be requested by January 10, 2012. If granted, the emergency approval will only be valid for 180 days.

Emergency review is being requested in accordance with the Act (44 U.S.C. 3507(j)), because if normal clearance procedures are followed, significant public confusion is reasonably likely to result. The Department believes that in the absence of emergency clearance, there will be widespread confusion among Federal firearms licensees, as well as among aliens lawfully present in the United States who wish to purchase a firearm, about a process that if not performed correctly can result in the imposition of civil or criminal sanctions. This public harm can be avoided by emergency review. *See* 44 U.S.C. 3507(j)(1)(B)(i). The Department is making conforming changes to the information collection instrument (ATF Form 4473, Firearms Transaction Record Part I—Over-the-Counter) so that the information collected is consistent with the requirements of law. The Department has recently concluded that two existing applications of the Gun Control Act (GCA) by ATF impose restrictions upon the lawful receipt and possession of firearms by aliens present in the United States that are not supported by the GCA. In particular, ATF regulations that extend the reach of 18 U.S.C. 922(g)(5)(B) to prohibit the possession of firearms by all nonimmigrant aliens (unless they qualify for one of the exceptions contained in 18 U.S.C. 922(y)(2)) are unwarranted in existing law, and may only extend to nonimmigrant aliens who have been admitted to the United States under a nonimmigrant visa. Moreover, the Department has also concluded that

under the terms of the GCA, aliens lawfully present in the United States may not be subject to state residency requirements that are different from those that apply to U.S. citizens. Accordingly, ATF Form 4473 is being revised to distinguish between nonimmigrant aliens admitted to the United States under a nonimmigrant visa and those who were admitted without a visa, and to strike an instruction on the form requiring aliens to establish residence in a State continuously for a period of at least 90 days prior to the date they propose to acquire a firearm from a Federal firearms licensee. Immediate revisions to Form 4473 are necessary to conform with the law. Publication of this notice will acquaint licensees and aliens with the Department's legal positions. Delaying implementation of the new interpretation during a three to six month notice and comment period will generate many questions about which position licensees should follow. Immediate implementation is therefore required.

The proposed changes are required by the GCA. Accordingly, this notice does not seek comments from the public concerning the proposed information collection.

Summary of Collection

(1) *Type of information collection:* Revision of a previously approved collection.

(2) *The title of the form/collection:* Firearms Transaction Record, Part 1, Over-the-Counter.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 4473 (5300.9) Part 1, Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit.

Need for Collection

The form is used to determine the eligibility, under the Gun Control Act, of a person to receive a firearm from a Federal firearm licensee and to establish the identity of the transferee. It is also used in law enforcement investigations/inspections to trace firearms and confirm that licensees are complying with their recordkeeping obligations under the GCA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Based on calendar year 2010 figures, ATF estimates that 14,409,616 respondents will respond to the collection each year and that the total amount of time to read the instructions and complete the form on average is 30 minutes. ATF estimates that the average amount of time it takes to read and complete the form will not be affected by the changes it is proposing here. ATF also notes, however, that previous estimates of number of respondents (112,073) who complete the form each year have been inaccurate.

(6) *An estimate of the total burden (in hours) associated with the collection:* ATF estimates 7,204,808 annual total burden hours associated with this collection. ATF notes that previous estimates of annual burden hours (56,037) have been inaccurate because they underestimated the number of respondents. The burden per respondent has not changed.

If additional information is required contact: Jerri Murray at *http://www.DOJ.PRA@usdoj.gov,* Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–32985 Filed 12–22–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on November 22, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Modular Methods, LLC, Steamboat Springs, CO, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on April 21, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 20, 2011 (76 FR 29267).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–32992 Filed 12–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on November 22, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Test Evolution, Hopkinton, MA; SignalCraft Technologies, Inc., Calgary, Alberta, Canada; Signadyne, Castelldefels (Barcelona), Spain; SignalCore Inc., Austin, TX; Modular Methods, LLC, Steamboat Springs, CO; and SELEX Galileo S.p.A., Roma, Italy, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal**

Register pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on September 6, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2011 (76 FR 63658).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–32994 Filed 12–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on December 6, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since July 22, 2011, ASME has published three new standards, initiated four new standards activities, established two new consensus committees, and withdrawn six standards within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on July 25, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 19, 2011 (76 FR 52014).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–32976 Filed 12–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0012]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Application for Registration, Application for Registration Renewal, Affidavit for Chain Renewal DEA Forms 225, 225a, 225b

ACTION: 30-Day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at 76 FR Number 201, pages 64381–64382, on October 18, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John W. Partridge, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the eight-digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact John W. Partridge, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, (202) 307–7297, or the DOJ Desk Officer at (202) 395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

Overview of Information Collection 1117–0012:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Registration, Application for Registration Renewal, Affidavit for Chain Renewal.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: DEA Forms 225, 225a, 225b.

Component: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit.

Other: Not-for-profit institutions; State, local, and tribal governments.

Abstract: The Controlled Substances Act requires all persons that manufacture, distribute, import, export, analytical laboratories, or conducts research with controlled substances to register with DEA. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA Form 225 is submitted on an as-needed basis by persons seeking to become registered, DEA Form 225a is submitted on an annual basis thereafter to renew existing registrations, and DEA

Form 225b is submitted annually for renewals of chain registrants.

	Number of annual respondents	Average time per response	Total annual hours
DEA–225 (paper)	465	0.5 hours (30 minutes)	232.5
DEA–225 (electronic)	1,562	0.17 hours (10 minutes)	260.33
DEA–225a (paper)	1,345	0.5 hours (30 minutes)	672.5
DEA–225a (electronic)	9,721	0.17 hours (10 minutes)	1,620.17
DEA–225b (chain renewal)*	4	1 hour	4
Total	13,097		2,789.5

* In total, 4 chains represent 85 individual registrant locations.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 2,789.5 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–32903 Filed 12–22–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Payable Periods in the Emergency Unemployment Compensation 2008 (EUC08) Program for Texas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Texas will trigger ''on'' to Tier Four of Emergency Unemployment Compensation 2008 (EUC08) for weeks of unemployment beginning December 11, 2011.

Public law 111–312 extended provisions in public law 111–92 which amended prior laws to create a Third and Fourth Tier of benefits within the EUC08 program for qualified unemployed workers claiming benefits in high unemployment states. The Department of Labor produces a trigger notice indicating which states qualify for EUC08 benefits within Tiers Three and Four and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notice covering state eligibility for the EUC08 program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

Based on data released by the Bureau of Labor Statistics on November 22, 2011, the three month average, seasonally adjusted total unemployment rate for Texas rose to meet the 8.5% threshold to trigger ''on'' in Tier Four of the EUC08 program. The payable period for Texas in Tier Four of EUC will begin December 11, 2011. As a result, the current maximum potential entitlement will increase from 47 weeks to 53 weeks in the EUC08 program.

Information for Claimants

The duration of benefits payable in the EUC program, and the terms and conditions under which they are payable, are governed by public laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205 and 111–312, and the operating instructions issued to the states by the U.S. Department of Labor. Persons who believe they may be entitled to additional benefits under the EUC08 program, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by email: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 6th day of December, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–32881 Filed 12–22–11; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

[Funding Opportunity Number: SGA/DFA PY 11–05]

Notice of Funding Opportunity and Solicitation for Grant Application (SGA) for Workforce Innovation Fund Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

SUMMARY: Through this notice, the Department of Labor's Employment and Training Administration (ETA) announces the availability of approximately $98.5 million in Workforce Innovation Fund grants authorized by the Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10) to support innovative approaches to the design and delivery of employment and training services that generate long-term improvements in the performance of the public workforce system, both in terms of outcomes for job seeker and employer customers and cost-effectiveness. ETA expects to fund approximately 20 to 30 grants; individual grant amounts will range from $1 million to $12 million. The eligible applicants are (i) State Workforce Agencies; (ii) Local Workforce Investment Boards; (iii) entities eligible to apply for WIA Section 166 grants; (iv) consortia of State Workforce Agencies; (v) consortia of Local Workforce Investment Boards; and (vi) consortia of entities eligible to apply for WIA Section 166 grants. Grants made under the Workforce Innovation Fund will provide funds to (a) retool service delivery strategies and/or policy and administrative systems and processes to improve outcomes for workforce system customers and (b)

evaluate the effectiveness of such activities.

The complete SGA and any subsequent SGA amendments, in connection with this solicitation is described in further detail on ETA's Web site at *http://www.doleta.gov* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is March 22, 2012.

FOR FURTHER INFORMATION CONTACT: Ariam Ferro, 200 Constitution Avenue NW., Room N4716, Washington, DC 20210; telephone: (202) 693–3968.

The Grant Officer for this SGA is Donna Kelly.

Signed at Washington, DC, this 20th day of December, 2011.

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2011–32995 Filed 12–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0180]

Addendum to the Memorandum of Understanding with the Department of Energy (August 28, 1992); Oak Ridge, Tennessee Facilities

AGENCY: The Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Addendum to Memorandum of Understanding between the Department of Labor and the Department of Energy: the transfer of two existing building complexes and three other parcels of land located at the East Tennessee Technology Park in Oak Ridge, Tennessee; transfer of employee safety and health authority from the Department of Energy (DOE) to the Tennessee Occupational Safety and Health Administration (TOSHA).

SUMMARY: This document is a notice of an addendum to the 1992 interagency Memorandum of Understanding (MOU) between the U.S. Department of Labor and the U.S. Department of Energy. That MOU states that DOE has exclusive authority over the occupational safety and health of contractor employees at DOE Government-Owned and Contractor-Operated facilities (GOCOs). In addition, the MOU between the departments dated July 25, 2000, on safety and health enforcement at privatized facilities and operations, provides that OSHA has regulatory authority over occupational safety and health at certain privatized facilities and operations on land formerly under the control of DOE. This action is taken in accordance with the July 25, 2000 MOU, which establishes specific interagency procedures for the transfer of occupational safety and health coverage for such privatized facilities and operations from DOE to OSHA and state agencies acting under state plans approved by OSHA pursuant to section 18 of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 667. The MOUs may be found on the internet via the OSHA Web page *http://www.osha.gov* under the ''D'' for Department of Energy Transition Activities.

DATES: *Effective Date:* The effective date of the Addendum to the Memorandum of Understanding is December 23, 2011.

FOR FURTHER INFORMATION CONTACT: Stefan Weisz, Safety and Occupational Health Specialist, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3655, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2110. Access electronic copies of this notice at OSHA's Web site: *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) and the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor entered into a MOU on August 10, 1992, delineating regulatory authority over the occupational safety and health of contractor employees at DOE government-owned or leased, contractor-operated (GOCO) facilities. In general, the MOU recognizes that DOE exercises statutory authority under section 161(f) of the Atomic Energy Act of 1954, as amended, [*42 U.S.C. 2201(f)*], relating to the occupational safety and health of private-sector employees at these facilities.

Section 4(b)(1) of the OSH Act of 1970, *29 U.S.C. 653(b)(1)*, exempts from OSHA authority working conditions with respect to which other federal agencies have exercised statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. The 1992 MOU acknowledges DOE's extensive program for the regulation of contractor health and safety, which requires contractor compliance with all OSHA standards as well as additional requirements prescribed by DOE, and concludes with an agreement by the agencies that the provisions of the OSH Act will not apply to GOCO sites for which DOE has exercised its authority to regulate occupational safety and health under the Atomic Energy Act.

In light of DOE's policy emphasis on privatization activities, OSHA and DOE entered into a second MOU on July 25, 2000 that establishes interagency procedures to address regulatory authority for occupational safety and health at specified privatized facilities and operations on sites formerly controlled by DOE. The 2000 MOU covers facilities and operations on lands no longer controlled by DOE, which are not conducting activities for or on behalf of DOE and where there is no likelihood that any employee exposure to radiation from DOE sources would be 25 millirems per year (mrem/yr) or more.

In a letter dated January 5, 2011, DOE requested that OSHA or, as appropriate, TOSHA accept occupational safety and health regulatory authority over employees at the East Tennessee Technology Park in Oak Ridge, Tennessee at two existing building complexes and three other parcels of land pursuant to the MOU on Safety and Health Enforcement at Privatized Facilities and Operations dated July 25, 2000. (Other facilities and properties at the East Tennessee Technology Park were transferred to TOSHA jurisdiction under this MOU by **Federal Register** notices at 74 FR 120 (January 2, 2009) and 74 FR 39977 (August 10, 2009).

The buildings and parcels of land transferred to the city of Oak Ridge, the Community Reuse Organization of East Tennessee (CROET), and the Heritage Center, LLC, are described as follows:

- *The K–1000 complex* consists of two separate buildings: the upper building, which was formerly a visitor center, and the lower building, which was formerly an access center. Building K–1501–H&L is a two-story building located inside of the property protection fence. It is currently used for maintenance and support by CROET, the site's utility operator. Building K–1008–F is also inside of the property protection fence and consists of offices, meeting rooms, and rest rooms.
- *The K–792 switchyard complex* (transferred to the Heritage Center, LLC, a subsidiary of CROET) includes the following land parcels and buildings: 19.91 acres of land; K–791–B, which is used for storage and office space; Building K–796–A, which is used as a conference room; and, the K–792 northern expansion area, which is 5 acres of undeveloped land, and a railroad spur. The area also contains a privately owned building (K–1310–MP), and two privately owned trailers (K–1310–MQ and K–1310–MS).

These privately owned properties, which are not being transferred, have never been under DOE authority.

- *Parcel ED–4* is 18 acres of woodland located in Roane County.
- *Parcel ED–5 West* is 26.25 acres of grassland located within the City of Oak Ridge. Parcel ED–5 includes a concrete slab, which was formerly a base for a sampling tower.
- *Parcel ED–8* is 84 acres located within the City of Oak Ridge. The Heritage Center, LLC, will receive 78 acres of land, and the 6 acres of roadway on Parcel ED–8 have been transferred to the City of Oak Ridge.

OSHA's Regional Office in Atlanta, Georgia, working with the OSHA Nashville Area Office and TOSHA, determined that TOSHA is willing to accept authority over the occupational safety and health of public-sector and private-sector employees at the two existing building complexes and the three other parcels of land at the East Tennessee Technology Park in Oak Ridge, Tennessee that were transferred by deed to the City of Oak Ridge and CROET, and the Heritage Center, LLC, respectively. In a letter from OSHA to DOE dated October 7, 2011, OSHA stated that TOSHA is satisfied with DOE assurances that (1) there is no likelihood that any employee at these facilities will be exposed to radiation levels that will be 25 millirems per year (mrem/yr) or more, and (2) transfer of authority to TOSHA is free from regulatory gaps, and does not diminish the safety and health protection of the employees. According to this letter, TOSHA therefore accepted and maintains health and safety regulatory authority over employees at building complexes K–1000, K–1501—H & L, K–1008—F, and K–79.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC, directed the preparation of this notice. This **Federal Register** notice provides public notice and serves as an addendum to the 1992 OSHA/DOE MOU. OSHA is issuing this notice under the authority specified by Section 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2)) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on December 19, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–32857 Filed 12–22–11; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–391; NRC–2008–0369]

Draft Supplement 2 to Final Environmental Statement Related to the Operation of Watts Bar Nuclear Plant, Unit 2; Tennessee Valley Authority

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Draft environmental statement, extension of public comment period.

SUMMARY: On November 10, 2011, the NRC published in the **Federal Register** (76 FR 70169) an opportunity for public comment on NUREG–0498, ''Final Environmental Statement, Supplement 2, Related to the Operation of Watts Bar Nuclear Plant [WBN], Unit 2—Draft Report for Comment'' (draft SFES). The draft SFES related to the review of the operating license application for WBN Unit 2 had been prepared in accordance with Section 51.92 of Title 10 of the *Code of Federal Regulations.* In response to requests from several members of the public, the NRC is extending the public comment period until January 24, 2012.

DATES: Submit comments by January 24, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2008–0369 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2008–0369. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: Carmen G. Fells, Project Manager, Environmental Review and Guidance Update Branch, Division of License Renewal, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Telephone: (301) 415–6337; fax number: (301) 415–2002; email: *carmen.fells@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The draft SFES is available electronically under ADAMS Accession Number ML112980199.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2008–0369.

II. Background

On December 8, 2011, the NRC held a public meeting (two sessions) at the

Magnuson Hotel, in Sweetwater, Tennessee in order to present an overview of the draft SFES and to accept public comments on the document. During these meetings a group of concerned citizens made short presentations, asked questions, and provided comments, with several individuals requesting that the NRC grant an extension to the 45-day comment period.

III. Proposed Action

By this action, the NRC is requesting public comments on the draft SFES. The NRC staff will make a final determination regarding issuance of the SFES after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 19th day of December 2011.

For the Nuclear Regulatory Commission.

Stephen J. Campbell,

Chief, Watts Bar Special Projects Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–32909 Filed 12–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on January 18, 2012, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 18, 2012—1:30 p.m. until 4:30 p.m.

The Subcommittee will review the draft of the Final Regulatory Guide 7.7, ''Administrative Guide for Verifying Compliance with Packaging Requirements for Shipment and Receipt of Radioactive Material.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone (301) 415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64127–64128).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone (240) 888–9835) to be escorted to the meeting room.

Dated: December 14, 2011.

Antonio F. Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–32907 Filed 12–22–11; 8:45 a.m.]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Approval of Special Withdrawal Liability Rules; the Cultural Institutions Pension Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation (''PBGC'') has received a request from The Cultural Institutions Pension Plan for approval of a plan amendment providing for special withdrawal liability rules. Under § 4203(f) of the Employee Retirement Income Security Act of 1974 and PBGC's regulation on Extension of Special Withdrawal Liability Rules, a multiemployer pension plan may, with PBGC approval, be amended to provide for special withdrawal liability rules similar to those that apply to the construction and entertainment industries. Such approval is granted only if PBGC determines that the rules apply to an industry with characteristics that make use of the special rules appropriate and that the rules will not pose a significant risk to PBGC. Before granting an approval, PBGC's regulations require PBGC to give interested persons an opportunity to comment on the request. The purpose of this notice is to advise interested persons of the request and to solicit their views on it.

DATES: Comments must be submitted on or before February 6, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Fax:* (202) 326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026. Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, or calling (202) 326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1 (800) 877–8339 and ask to be connected to (202) 326–4040.)

FOR FURTHER INFORMATION CONTACT: Theresa Anderson, Attorney, Office of the Chief Counsel, Suite 340, 1200 K Street NW., Washington, DC 20005–4026, (202) 326–4020. (For TTY/TTD users, call the Federal relay service toll free at 1 (800) 877–8339 and ask to be connected to (202) 326–4020.)

SUPPLEMENTARY INFORMATION:

Background

Section 4203(a) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''ERISA''), provides that a complete withdrawal from a multiemployer plan generally occurs when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under § 4205 of ERISA, a partial withdrawal generally occurs when an employer: (1) Reduces its contribution base units by seventy percent in each of three consecutive years; or (2) permanently ceases to have an obligation under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan, while continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location or to an entity or entities owned or controlled by the employer; or (3) permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased.

Although the general rules on complete and partial withdrawal identify events that normally result in a diminution of the plan's contribution base, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute normally does not weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

For construction industry plans and employers, § 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan and the employer either continues to perform previously covered work in the jurisdiction of the collective bargaining agreement, or resumes such work within five years without renewing the obligation to contribute at the time of resumption. Section 4203(c)(1) of ERISA applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. In contrast, the general definition of complete withdrawal in § 4203(a) of ERISA defines a withdrawal to include permanent cessation of the obligation to contribute regardless of the continued activities of the withdrawn employer.

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. Under § 4208(d)(1) of ERISA, ''[a]n employer to whom § 420[3](b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.'' Under § 4208(d)(2) of ERISA, ''[a]n employer to whom § 420[3](c) (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the [PBGC] by regulation.''

Section 4203(f)(1) of ERISA provides that PBGC may prescribe regulations under which plans in other industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in § 4203(b) and (c) of ERISA. Section 4203(f)(2) of ERISA provides that such regulations shall permit the use of special withdrawal liability rules only in industries (or portions thereof) in which PBGC determines that the characteristics that would make use of such rules appropriate are clearly shown, and that the use of such rules will not pose a significant risk to the insurance system under Title IV of ERISA. Section 4208(e)(3) of ERISA provides that PBGC shall prescribe by regulation a procedure by which plans may be amended to adopt special partial withdrawal liability rules upon a finding by PBGC that the adoption of such rules is consistent with the purposes of Title IV of ERISA.

PBGC's regulations on Extension of Special Withdrawal Liability Rules (29 CFR part 4203) prescribes procedures for a multiemployer plan to ask PBGC to approve a plan amendment that establishes special complete or partial withdrawal liability rules. The regulation may be accessed on PBGC's Web site (*http://www.pbgc.gov*).

Section 4203.5(b) of the regulation requires PBGC to publish a notice of the pendency of a request for approval of special withdrawal liability rules in the **Federal Register,** and to provide interested parties with an opportunity to comment on the request.

The Request

PBGC received a request, dated January 11, 2011, from The Cultural Institutions Pension Plan (''Cultural Plan''), which the Cultural Plan subsequently amended, for approval of a plan amendment providing for special withdrawal liability rules. PBGC's summary of the actuarial reports provided by the Cultural Plan may be accessed on PBGC's Web site (*http://www.pbgc.gov*). A copy of the complete filing may be requested from the PBGC Disclosure Officer. The fax number is (202) 326–4042. It may also be obtained by writing the Disclosure Officer, PBGC, 1200 K Street NW., Suite 11101, Washington, DC 20005.

In brief, the Cultural Plan is a multiemployer plan covering cultural institutions, such as zoos and museums, and New York City-funded daycare programs. The Cultural Plan's submission represents that the industry for which the rule is requested has characteristics similar to those of the construction industry. The Cultural Plan submitted an amendment prescribing special withdrawal liability rules, which, if approved by PBGC, would be retroactively effective as of July 1, 2009, to the extent permitted by ERISA § 4214(a). Under the proposed amendment, complete withdrawal of an employer would occur only: (a) Under conditions similar to those described in ERISA § 4203(b)(2) for the building and construction rule; (b) upon the employer's sale or transfer of a substantial portion of its business or assets to another entity who performs such work in the jurisdiction of the collective bargaining agreement but has no obligation to contribute to the Cultural Plan; or (c) when the employer ceases to have an obligation to contribute in connection with the withdrawal of every or substantially all employer(s) from the Cultural Plan. Partial withdrawal of an employer would occur only under conditions similar to those described in ERISA § 4208(d)(1). The proposed amendment would not apply to any employer who made contributions for non-collectively-bargained employees in the year of withdrawal and the four preceding plan years. The request includes actuarial data to support the plan's contention that the amendment will not pose a significant risk to the insurance system under Title IV of ERISA.

Issued at Washington, DC, December 15th, 2011.

Joshua Gotbaum,

Director.

[FR Doc. 2011–32962 Filed 12–22–11; 8:45 am]

BILLING CODE 7709–01–P

OFFICE OF PERSONNEL MANAGEMENT

National Council on Federal Labor-Management Relations Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The National Council on Federal Labor-Management Relations plans to meet on the following dates:

Wednesday, January 18, 2012.
Wednesday, February 15, 2012.
Wednesday, March 21, 2012.

The meetings will start at 10 a.m. and will be held in Room 1350, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Interested parties should consult the Council Web site at *http://www.lmrcouncil.gov* for the latest information on Council activities, including changes in meeting dates.

The Council is an advisory body composed of representatives of Federal employee organizations, Federal management organizations, and senior government officials. The Council was established by Executive Order 13522, entitled, ''Creating Labor-Management Forums to Improve Delivery of Government Services,'' which was signed by the President on December 9, 2009. Along with its other responsibilities, the Council assists in the implementation of Labor Management Forums throughout the government and makes recommendations to the President on innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests. The Council is co-chaired by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget.

At its meetings, the Council will continue its work in promoting cooperative and productive relationships between labor and management in the executive branch, by carrying out the responsibilities and functions listed in Section 1(b) of the Executive Order. The meetings are open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

FOR FURTHER INFORMATION CONTACT: Tim Curry, Deputy Associate Director for Partnership and Labor Relations, Office of Personnel Management, 1900 E Street NW., Room 7H28–E, Washington, DC 20415. Phone (202) 606–2930 or email at *PLR@opm.gov.*

For the National Council.

John Berry,

Director.

[FR Doc. 2011–32882 Filed 12–22–11; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

Docket No. CP2012–4; Order No. 1057]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to enter into an additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 agreement. This document invites public comments on the request and addresses several related procedural steps.

DATES: *Comments are due:* December 27, 2011, 4:30 p.m., Eastern Time.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Additional Matters
III. Ordering Paragraphs

I. Introduction

On December 9, 2011, the Postal Service filed notice, pursuant to 39 CFR 3015.5 and Order No. 546, informing the Commission that it has entered into a bilateral agreement with Canada Post Corporation (Canada Post 2012 Agreement or Agreement) and seeks to include the Agreement within the Inbound Competitive Multi-Service Agreement with a Foreign Postal Operators 1 product.[1] The Notice concerns only the inbound portion of the Agreement; specifically, inbound Expedited Parcels USA and EMS for delivery in the United States. *Id.* at 4.

Attachments to the Notice include:

- Attachment 1—a redacted copy of the 2012–2013 bilateral agreement with Canada Post and supporting documents;
- Attachment 2—the certified statement, required under Commission rules, attesting to the accuracy of supporting data and explaining why, after the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3);[2]
- Attachment 3—the certification of the Governors' vote in Governors' Decision No. 10–3; and
- Attachment 4—an application for non-public treatment of certain materials.

The Postal Service also provided a redacted copy of the Agreement and supporting financial documentation as an Excel file. *Id.* at 3.

Parent product. In Order No. 546, the Commission approved the Inbound Competitive Multi-Service Agreements with Foreign Operators 1 product and included the TNT Agreement within the product at that time. It also acknowledged that the Postal Service proposed adding other functionally equivalent agreements as price categories within this product.[3] The Commission, pursuant to the proposed approach, subsequently found it appropriate to include several other bilateral agreements within the parent product.[4]

Canada Post 2012 Agreement. The Postal Service and Canada Post, the postal operator, are parties to the Agreement. The Agreement is to deliver inbound Expedited Parcels USA and EMS in the United States. The effective date of the rates for the items included in the Agreement is January 1, 2012. Notice at 4. The rates are to remain in effect for two years after the effective date, unless terminated sooner. *Id.*

Functional equivalency. The Postal Service asserts that the inbound portion

[1] Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, December 9, 2011 (Notice).

[2] Commission rule 3015.5(c)(2) addresses the required certification. Section 3633(a)(1) includes a prohibition against the subsidization of competitive products by market dominant products. Section 3633(a)(3) includes the requirement that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service.

[3] ''TNT Agreement'' refers to Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement). See Order No. 546.

[4] The China Post Agreement was added in Order No. 859 (Docket No. CP2011–68). The Norway Post Agreement was added in Order No. 840 (Docket No. CP2011–69). The Australia Post Agreement was added in Order No. 956 (Docket No. CP2012–1).

of the Canada Post Agreement is substantially similar to the inbound portion of the TNT and Australia Post Agreement in terms of the products being offered under the contract and the contract's cost characteristics. *Id.* at 5. It claims that like those agreements, the Canada Post Agreement fits within the parameters outlined by Governors' Decision No. 10–3, which establishes the rates for Inbound Competitive Multi-Service Agreements with Foreign Operators. *Id.* It also identifies some differences, but says most are immaterial to the Commission's functional equivalency analysis. The differences include more detailed provisions concerning the consequences of early termination and the processes to be used to protect Canada Post's confidential information when filed in regulatory or other proceedings in the United States. *Id.* The Postal Service says it is possible that the more detailed information could have an impact on the cost characteristics of this Agreement in comparison to others in the product grouping, but asserts the difference would be a positive one because the more detailed termination clause eliminates substantial risks concerning the rates following termination that would otherwise apply. *Id.* at 5–6. It also says the more detailed provision concerning procedures to be followed in the event of certain regulatory filings does not affect either the market or cost characteristics of the Agreement. *Id.*

Relevant cost and market characteristics. The Postal Service asserts that because the Canada Post 2012 Agreement and the Australia and TNT Post Agreements incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same, for the Canada Post 2012 Agreement and the TNT and Australia Post Agreements. *Id.* at 6. The Postal Service says it does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the agreements. It claims that nothing detracts from the conclusion that these agreements are functionally equivalent in all pertinent respects. *Id.*

Postal Service's position. The Postal Service therefore maintains, based on the reasons discussed in the Notice and as demonstrated by the financial data filed under seal, it has established that the Canada Post 2012 Agreement is in compliance with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the TNT and Australia Post Agreements within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010–34) product. Id.

The Agreement's status as a ''draft.'' The text of the Agreement is marked ''Draft'' because the parties continue to exchange drafts concerning the exact wording of the terms and conditions. *Id.* at 1 n.2. The Postal Service does not expect any substantive changes to the rates, the operational terms, or the financial liability provisions of the Agreement because those negotiations have been successfully concluded. *Id.* It anticipates filing a final signed version of the Agreement with the Commission and the Department of State prior to December 31, 2011. *Id.*

The Commission considers the draft version acceptable for purposes of issuing notice of the Postal Service's filing; however, it cannot base its final order in this proceeding on the draft version. To avoid delay in issuance of the final order, the Commission urges the Postal Service to file the final executed Agreement as soon as possible. At that time, the Postal Service should identify all changes between the draft version and the Agreement as executed.

II. Additional Matters

Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3632 and 3633 and 39 CFR part 3015. Comments are due no later than December 27, 2011.

The public portions of the Postal Service filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is Ordered

1. The Commission establishes Docket No. CP2012–4 to consider matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public.

3. Comments by interested persons in this proceeding are due no later than December 27, 2011.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–32900 Filed 12–22–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–88; Order No. 1045]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Alplaus, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: January 3, 2012, 4:30 p.m., Eastern Time: Deadline for Petitioner's Form 61; January 23, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 29, 2011 the Commission received a petition for review of the Postal Service's determination to close the Alplaus post office in Alplaus, New York. The petition for review was filed by Andy Gilpin (Petitioner) and is postmarked November 25, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–88 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than January 3, 2012.

Categories of issues apparently raised. Petitioner contends that (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39

U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)); and (4) the Postal Service failed to follow procedures required by law regarding closures (*see* 39 U.S.C. 404(d)(5)(B)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is also within 15 days after the date in which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's Web master via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before January 9, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, James F. Callow is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 29, 2011	Filing of Appeal.
December 14, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 14, 2011	Deadline for the Postal Service to file any responsive pleading.
January 9, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
January 3, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 23, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
February 7, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 14, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
March 23, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–32902 Filed 12–22–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–87; Order No. 1044]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Freeport, Kansas post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: January 3, 2012, 4:30 p.m., Eastern Time: Deadline for Petitioner's Form 61; January 23, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT**

section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 29, 2011 the Commission received a petition for review of the Postal Service's determination to close the Freeport post office in Freeport, Kansas. The petition for review was filed by Carol A. Peterson (Petitioner) and is postmarked November 23, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–87 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than January 3, 2012.

Categories of issues apparently raised. Petitioner contends that (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) that there are factual errors contained in the Final Determination.

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is also within 15 days after the date in which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before January 9, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 29, 2011	Filing of Appeal.
December 14, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 14, 2011	Deadline for the Postal Service to file any responsive pleading.
January 9, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
January 3, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 23, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
February 7, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 14, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
March 22, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–32901 Filed 12–22–11; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–89; Order No. 1054]

Post Office Closing

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Mt. Sterling, Wisconsin post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: January 4, 2012, 4:30 p.m., Eastern Time: Deadline for Petitioner's Form 61; January 24, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 30, 2011, the Commission received a petition for review of the Postal Service's determination to close the Mt. Sterling post office in Mt. Sterling, Wisconsin. The petition for review was filed by Judith E. Hansen (Petitioner) and is postmarked November 17, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–89 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than January 4, 2012.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider whether it will continue to provide a maximum degree of effective and regular postal service to the community. *See* 39 U.S.C. 404(d)(2)(A)(iii).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before January 13, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Derrick Dennis is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register.**

By the Commission.

Shoshana M. Grove,
Secretary.

PROCEDURAL SCHEDULE

November 30, 2011	Filing of Appeal.
December 15, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 15, 2011	Deadline for the Postal Service to file any responsive pleading.
January 13, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).

PROCEDURAL SCHEDULE—Continued

January 4, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 24, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
February 8, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 15, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
March 16, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–32905 Filed 12–22–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATE AND TIME: Monday, January 9, 2012 at 4 p.m., Tuesday, January 10, 2012, at 8:30 a.m.

PLACE: San Diego, California.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Monday, January 9, 2012, at 4 p.m. (Closed)

1. Strategic Issues.

Tuesday, January 10, 2012, at 8:30 a.m. (Closed)

1. Financial Matters.
2. Pricing.
3. Personnel Matters and Compensation Issues.
4. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2011–33026 Filed 12–21–11; 11:15 am]

BILLING CODE 7710–12–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information: Public Access to Digital Data Resulting From Federally Funded Scientific Research

ACTION: Notice of Request for Information (RFI).

SUMMARY: The RFI is being extended to change the response date to January 12, 2012. The RFI was published in the **Federal Register**, Volume 76, Number 214, on November 4, 2011, pages 68517–68518.

In accordance with Section 103(b)(6) of the America COMPETES Reauthorization Act of 2010 (ACRA; Pub. L. 111–358), this Request for Information (RFI) offers the opportunity for interested individuals and organizations to provide recommendations on approaches for ensuring long-term stewardship and encouraging broad public access to unclassified digital data that result from federally funded scientific research. The public input provided through this Notice will inform deliberations of the National Science and Technology Council's Interagency Working Group on Digital Data.

Release Date: November 3, 2011.

Response Date: January 12, 2012.

ADDRESSES: *digitaldata@ostp.gov.*

Issued By: Office of Science and Technology Policy (OSTP) on behalf of the National Science and Technology Council (NSTC)

SUPPLEMENTARY INFORMATION:

Purpose

In accordance with Section 103(b)(6) of the America COMPETES Reauthorization Act of 2010 (ACRA; Pub. L. 111–358), this Request for Information (RFI) offers the opportunity for interested individuals and organizations to provide recommendations on approaches for ensuring long-term stewardship and encouraging broad public access to unclassified digital data that result from federally funded scientific research. The public input provided through this Notice will inform deliberations of the National Science and Technology Council's Interagency Working Group on Digital Data.

Background

The multi-agency Interagency Working Group on Digital Data (Working Group), established under the National Science and Technology Council (NSTC) Committee on Science (CoS), has been tasked with developing options for implementing the digital data policy and standards requirements of Section 103 of ACRA. OSTP will issue a report to Congress, in accordance with Section 103(e) of ACRA, describing priorities for the development of agency policies for ensuring broad public access to the results of federally funded unclassified research, the status of agency policies for public access to digital data resulting from federally funded research, and a summary of public input collected from this RFI and other mechanisms. The Working Group is considering steps that can be taken by Federal agencies to encourage and coordinate the development of agency policies and standards to promote long-term preservation of and access to digital data resulting from federally funded scientific research. Ideally, such policies would harmonize, to the extent practicable and feasible, data management plans for digital data that are collected or otherwise produced either by the agency itself or extramurally with Federal funds. The 2009 report of the Interagency Working Group on Digital Data of the National Science and Technology Council, ''Harnessing the Power of Digital Data,'' recommended that agencies lay the foundations for digital scientific data policy and make their policies publicly available. It also recommended that agencies consider requiring data management plans for projects that will generate ''preservation data''—those data for which the benefits of preservation exceed the costs. Federal science agencies already have some experience with policies to promote long-term preservation and access to scientific data. Indeed current Federal policies promote and in many cases require Federal agencies to make the digital data generated by Federal agencies more publically accessible. However, such policies do not routinely cover data generated through Federal grants, cooperative agreements, and some other types of funding mechanism. Exceptions include, the National Institutes of Health's (NIH) Data Sharing Policy, which requires all investigator-initiated applications with direct costs greater than $500,000 in any single year provide a data management plan. In addition, NIH has more specific data management and data sharing requirements for specific types of projects, such as genome-wide association studies.

In January 2011, the National Science Foundation (NSF) reaffirmed its data management policy requirement,

indicating that proposals must include a Data Management Plan that describes how funded researchers will conform to NSF policy on the dissemination and sharing of research results. The NSF policy is clear that ''Investigators are expected to share with other researchers, at no more than incremental cost and within a reasonable time, the primary data, samples, physical collections and other supporting materials created or gathered in the course of work under NSF grants.'' Such models may not necessarily be appropriate for all types of federally sponsored research.

As agencies consider how to further develop digital data policies, it is important to note that all policies for increasing accountability and access to digital data must follow statutory requirements and follow best practices for protecting confidentiality, personal privacy, proprietary interests, intellectual property rights, author attribution, and for ensuring that homeland and national security interests are not compromised.

The Working Group is now seeking additional insight from ''non-Federal stakeholders, including the public, universities, nonprofit and for-profit publishers, libraries, federally funded and non-federally funded research scientists, and other organizations and institutions with an interest in long-term stewardship and improved public access to the results of federally funded research,'' as described in Section 103(b)(6) of ACRA. Specifically the Working Group seeks further public comment on the questions listed below:

Preservation, Discoverability, and Access

(1) What specific Federal policies would encourage public access to and the preservation of broadly valuable digital data resulting from federally funded scientific research, to grow the U.S. economy and improve the productivity of the American scientific enterprise?

(2) What specific steps can be taken to protect the intellectual property interests of publishers, scientists, Federal agencies, and other stakeholders, with respect to any existing or proposed policies for encouraging public access to and preservation of digital data resulting from federally funded scientific research?

(3) How could Federal agencies take into account inherent differences between scientific disciplines and different types of digital data when developing policies on the management of data?

(4) How could agency policies consider differences in the relative costs and benefits of long-term stewardship and dissemination of different types of data resulting from federally funded research?

(5) How can stakeholders (e.g., research communities, universities, research institutions, libraries, scientific publishers) best contribute to the implementation of data management plans?

(6) How could funding mechanisms be improved to better address the real costs of preserving and making digital data accessible?

(7) What approaches could agencies take to measure, verify, and improve compliance with Federal data stewardship and access policies for scientific research? How can the burden of compliance and verification be minimized?

(8) What additional steps could agencies take to stimulate innovative use of publicly accessible research data in new and existing markets and industries to create jobs and grow the economy?

(9) What mechanisms could be developed to assure that those who produced the data are given appropriate attribution and credit when secondary results are reported?

Standards for Interoperability, Re-Use and Re-Purposing

(10) What digital data standards would enable interoperability, reuse, and repurposing of digital scientific data? For example, MIAME (minimum information about a microarray experiment; see Brazma *et al.,* 2001, Nature Genetics 29, 371) is an example of a community-driven data standards effort.

(11) What are other examples of standards development processes that were successful in producing effective standards and what characteristics of the process made these efforts successful?

(12) How could Federal agencies promote effective coordination on digital data standards with other nations and international communities?

(13) What policies, practices, and standards are needed to support linking between publications and associated data?

Response to this RFI is voluntary. Responders are free to address any or all the above items, as well as provide additional information that they think is relevant to developing policies consistent with increased preservation and dissemination of broadly useful digital data resulting from federally funded research. Please note that the Government will not pay for response preparation or for the use of any information contained in the response.

How To Submit a Response

All comments must be submitted electronically to: *digitaldata@ostp.gov.*

Responses to this RFI will be accepted through January 12, 2012. You will receive an electronic confirmation acknowledging receipt of your response, but will not receive individualized feedback on any suggestions. No basis for claims against the U.S. Government shall arise as a result of a response to this request for information or from the Government's use of such information.

Inquiries

Specific questions about this RFI should be directed to the following email address: *digitaldata@ostp.gov.*

Form should include:
[Assigned ID #]
[Assigned Entry date]
Name/Email
Affiliation/Organization
City, State
Comment 1
Comment 2
Comment 3
Comment 4
Comment 5
Comment 6
Comment 7
Comment 8
Comment 9
Comment 10
Comment 11

In addition, please identify any other items the Working Group might consider for Federal policies related to public access to peer-reviewed scholarly publications resulting from federally supported research.

Please attach any documents that support your comments to the questions.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–32947 Filed 12–22–11; 8:45 am]

BILLING CODE P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information: Public Access to Peer-Reviewed Scholarly Publications Resulting From Federally Funded Research

ACTION: Notice of Request for Information (RFI).

SUMMARY: This RFI is being extended to change the response date to January 12, 2012. The RFI was published in the **Federal Register**, Volume 76, Number

214, on November 4, 2011, pages 68518–68520. In accordance with Section 103(b)(6) of the America COMPETES Reauthorization Act of 2010 (ACRA; Pub. L. 111–358), this Request for Information (RFI) offers the opportunity for interested individuals and organizations to provide recommendations on approaches for ensuring long-term stewardship and broad public access to the peer-reviewed scholarly publications that result from federally funded scientific research. The public input provided through this Notice will inform deliberations of the National Science and Technology Council's Task Force on Public Access to Scholarly Publications.

Release Date: November 3, 2011.

Response Date: January 12, 2012.

ADDRESSES: *publicaccess@ostp.gov.*

Issued By: Office of Science and Technology Policy (OSTP) on behalf of the National Science and Technology Council (NSTC).

SUPPLEMENTARY INFORMATION:

Purpose

In accordance with Section 103(b)(6) of the America COMPETES Reauthorization Act of 2010 (ACRA; Pub. L. 111–358), this Request for Information (RFI) offers the opportunity for interested individuals and organizations to provide recommendations on approaches for ensuring long-term stewardship and broad public access to the peer-reviewed scholarly publications that result from federally funded scientific research. The public input provided through this Notice will inform deliberations of the National Science and Technology Council's Task Force on Public Access to Scholarly Publications.

Background

The multi-agency Task Force on Public Access to Scholarly Publications (Task Force), established under the National Science and Technology Council (NSTC) Committee on Science (CoS), has been tasked with developing options for implementing the scholarly publications requirements of Section 103 of ACRA. OSTP will issue a report to Congress, in accordance with Section 103(e) of ACRA, describing priorities for the development of agency policies for ensuring broad public access to the results of federally funded unclassified research, the status of agency policies for public access to publications resulting from federally funded research, and a summary of public input collected from this RFI and other mechanisms.

In 2009 and 2010, OSTP conducted a public consultation about policy options for expanding public access to federally funded peer-reviewed scholarly articles. The Task Force has reviewed the information submitted through OSTP's public consultation (the full set of comments can be viewed on the OSTP Web site [*http://www.whitehouse.gov/blog/2010/03/08/public-access-policy-update*]), experience with the various policies currently in use at a variety of Federal agencies, and a report from the congressionally convened Scholarly Publishing Roundtable (*http://www.aau.edu/WorkArea/showcontent.aspx?id=10044*). The Task Force is now seeking additional insight from ''non-Federal stakeholders, including the public, universities, nonprofit and for-profit publishers, libraries, federally funded and non-federally funded research scientists, and other organizations and institutions with a stake in long-term preservation and access to the results of federally funded research,'' as described in Section 103(b)(6) of the ACRA. Specifically, OSTP seeks further public comment on the questions listed below, on behalf of the Task Force:

(1) Are there steps that agencies could take to grow existing and new markets related to the access and analysis of peer-reviewed publications that result from federally funded scientific research? How can policies for archiving publications and making them publically accessible be used to grow the economy and improve the productivity of the scientific enterprise? What are the relative costs and benefits of such policies? What type of access to these publications is required to maximize U.S. economic growth and improve the productivity of the American scientific enterprise?

(2) What specific steps can be taken to protect the intellectual property interests of publishers, scientists, Federal agencies, and other stakeholders involved with the publication and dissemination of peer-reviewed scholarly publications resulting from federally funded scientific research? Conversely, are there policies that should not be adopted with respect to public access to peer-reviewed scholarly publications so as not to undermine any intellectual property rights of publishers, scientists, Federal agencies, and other stakeholders?

(3) What are the pros and cons of centralized and decentralized approaches to managing public access to peer reviewed scholarly publications that result from federally funded research in terms of interoperability, search, development of analytic tools, and other scientific and commercial opportunities? Are there reasons why a Federal agency (or agencies) should maintain custody of all published content, and are there ways that the government can ensure long-term stewardship if content is distributed across multiple private sources?

(4) Are there models or new ideas for public-private partnerships that take advantage of existing publisher archives and encourage innovation in accessibility and interoperability, while ensuring long-term stewardship of the results of federally funded research?

(5) What steps can be taken by Federal agencies, publishers, and/or scholarly and professional societies to encourage interoperable search, discovery, and analysis capacity across disciplines and archives? What are the minimum core metadata for scholarly publications that must be made available to the public to allow such capabilities? How should Federal agencies make certain that such minimum core metadata associated with peer-reviewed publications resulting from federally funded scientific research are publicly available to ensure that these publications can be easily found and linked to Federal science funding?

(6) How can Federal agencies that fund science maximize the benefit of public access policies to U.S. taxpayers, and their investment in the peer-reviewed literature, while minimizing burden and costs for stakeholders, including awardee institutions, scientists, publishers, Federal agencies, and libraries?

(7) Besides scholarly journal articles, should other types of peer-reviewed publications resulting from federally funded research, such as book chapters and conference proceedings, be covered by these public access policies?

(8) What is the appropriate embargo period after publication before the public is granted free access to the full content of peer reviewed scholarly publications resulting from federally funded research? Please describe the empirical basis for the recommended embargo period. Analyses that weigh public and private benefits and account for external market factors, such as competition, price changes, library budgets, and other factors, will be particularly useful. Are there evidence-based arguments that can be made that the delay period should be different for specific disciplines or types of publications?

Please identify any other items the Task Force might consider for Federal policies related to public access to peer-reviewed scholarly publications resulting from federally supported research.

Response to this RFI is voluntary. Responders are free to address any or all the above items, as well as provide additional information that they think is relevant to developing policies consistent with increased public access to peer-reviewed scholarly publications resulting from federally funded research. Please note that the U.S. Government will not pay for response preparation or for the use of any information contained in the response.

How To Submit a Response

All comments must be submitted electronically to: *publicaccess@ostp.gov.*

Responses to this RFI will be accepted through January 12, 2012. You will receive an electronic confirmation acknowledging receipt of your response, but will not receive individualized feedback on any suggestions. No basis for claims against the U.S. Government shall arise as a result of a response to this request for information or from the Government's use of such information.

Inquiries

Specific questions about this RFI should be directed to the following email address: *publicaccess@ostp.gov.*

Form should include:
[Assigned ID #]
[Assigned Entry date]
Name/Email
Affiliation/Organization
City, State
Comment 1
Comment 2
Comment 3
Comment 4
Comment 5
Comment 6
Comment 7
Comment 8

Please identify any other items the Task Force might consider for Federal policies related to public access to peer-reviewed scholarly publications resulting from federally supported research.

{Attachment is: Please attach any documents that support your comments to the questions.}

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–32943 Filed 12–22–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 24b–1, OMB Control No. 3235–0194, SEC File No. 270–205.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rule: Rule 24b01 (17 CFR 240.24b–1).

Rule 24b–1 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) requires a national securities exchange to keep and make available for public inspection a copy of its registration statement and exhibits filed with the Commission, along with any amendments thereto.

There are 15 national securities exchanges that spend approximately one half hour each complying with this rule, for an aggregate total compliance burden of 7.5 hours per year. The staff estimates that the average cost per respondent is $65.18 per year, calculated as the costs of copying ($13.97) plus storage ($51.21), resulting in a total cost of compliance for the respondents of $977.70.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: December 19, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32920 Filed 12–22–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 19d–2, OMB Control No. 3235–0205, SEC File No. 270–204.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the existing collection of information of Rule 19d–2 (17 CFR 240.19d–2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 19d–2 prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency.

It is estimated that approximately fifteen respondents will utilize this application procedure annually, with a total burden of 45 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–2 is 3 hours.

Based on the most recent available information, the Commission staff estimates that the cost to respondents of complying with the requirements of Rule 19d–2 is $876 per response. Therefore, the Commission staff estimates that the total annual reporting cost per respondent is $876 (1 response/respondent/year × $876 cost/response), for a total annual related cost to all respondents of $13,140 ($876 cost/respondent × 15 respondents).

The Commission 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 control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory

Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 19, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32919 Filed 12–22–11; 8:45 a.m.]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Reports of Evidence of Material Violations, SEC File No. 270–514, OMB Control No. 3235–0572.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. Sections 3501–3520, the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension.

On February 6, 2003, the Commission published final rules, effective August 5, 2003, entitled ''Standards of Professional Conduct for Attorneys Appearing and Practicing Before the Commission in the Representation of an Issuer'' (17 CFR 205.1–205.7). The information collection embedded in the rules is necessary to implement the Standards of Professional Conduct for Attorneys prescribed by the rule and required by Section 307 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7245). The rules impose an ''up-the-ladder'' reporting requirement when attorneys appearing and practicing before the Commission become aware of evidence of a material violation by the issuer or any officer, director, employee, or agent of the issuer. An issuer may choose to establish a qualified legal compliance committee (''QLCC'') as an alternative procedure for reporting evidence of a material violation. In the rare cases in which a majority of a QLCC has concluded that an issuer did not act appropriately, the information may be communicated to the Commission. The collection of information is, therefore, an important component of the Commission's program to discourage violations of the federal securities laws and promote ethical behavior of attorneys appearing and practicing before the Commission.

The respondents to this collection of information are attorneys who appear and practice before the Commission and, in certain cases, the issuer, and/or officers, directors and committees of the issuer. We believe that, in providing quality representation to issuers, attorneys report evidence of violations to others within the issuer, including the Chief Legal Officer, the Chief Executive Officer, and, where necessary, the directors. In addition, officers and directors investigate evidence of violations and report within the issuer the results of the investigation and the remedial steps they have taken or sanctions they have imposed. Except as discussed below, we therefore believe that the reporting requirements imposed by the rule are ''usual and customary'' activities that do not add to the burden that would be imposed by the collection of information.

Certain aspects of the collection of information, however, may impose a burden. For an issuer to establish a QLCC, the QLCC must adopt written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation. We estimate for purposes of the PRA that there are approximately 16,517 issuers that are subject to the rules.[1] Of these, we estimate that approximately 3.8% percent, or 637, have established or will establish a QLCC.[2] Establishing the written procedures required by the rule should not impose a significant burden. We assume that an issuer would incur a greater burden in the year that it first establishes the procedures than in subsequent years, in which the burden would be incurred in updating, reviewing, or modifying the procedures. For purposes of the PRA, we assume that an issuer would spend 6 hours every three-year period on the procedures. This would result in an average burden of 2 hours per year. Thus, we estimate for purposes of the PRA that the total annual burden imposed by the collection of information would be 1,274 hours. Assuming half of the burden hours will be incurred by outside counsel at a rate of $500 per hour would result in a cost of $318,500.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. 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.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden[s] of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 19, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32921 Filed 12–22–11; 8:45 am]

BILLING CODE 8011–01–P

[1] This estimate is based, in part, on the total number of operating companies that filed annual reports on Form 10–K, Form 20–F, or Form 40–F, during the 2011 fiscal year and an estimate of the average number of issuers that may have a registration statement filed under the Securities Act pending with the Commission at any time (14,000). In addition, we estimate that approximately 2,517 investment companies currently file periodic reports on Form N–SAR.

[2] We base this estimate on the number of issuers who have reported in filings with the Commission that they have created QLCCs. Indications are that the 2005 estimate of the percentage of issuers that would establish QLCCs (10%) was high. Our adjusted estimate in the percentage of QLCCs (3.8%) results in a reduced burden estimate as compared to the previously-approved collection.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 15c2–7, SEC File No. 270–420, OMB Control No. 3235–0479.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 et *seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rule: Rule 15c2–7 (17 CFR 240.15c2–7).

Rule 15c2–7 places disclosure requirements on broker-dealers who have correspondent relationships, or agreements identified in the rule, with other broker-dealers. Whenever any such broker-dealer enters a quotation for a security through an inter-dealer quotation system, Rule 15c2–7 requires the broker-dealer to disclose these relationships and agreements in the manner required by the rule. The inter-dealer quotation system must also be able to make these disclosures public in association with the quotation the broker-dealer is making.

When Rule 15c2–7 was adopted in 1964, the information it requires was necessary for execution of the Commission's mandate under the Securities Exchange Act of 1934 to prevent fraudulent, manipulative and deceptive acts by broker-dealers. In the absence of the information collection required under Rule 15c2–7, investors and broker-dealers would have been unable to accurately determine the market depth of, and demand for, securities in an inter-dealer quotation system.

There are approximately 4,810 broker-dealers registered with the Commission. Any of these broker-dealers could be potential respondents for Rule 15c2–7, so the Commission is using that number as the number of respondents. Rule 15c2–7 applies only to quotations entered into an inter-dealer quotation system, such as the OTC Bulletin Board (''OTCBB'') or OTC Link (formerly ''Pink Sheets''), operated by OTC Markets Group Inc. (''OTC Link''). According to representatives of both OTC Link and the OTCBB, neither entity has recently received, or anticipates receiving any Rule 15c2–7 notices. However, because such notices could be made, the Commission estimates that one filing is made annually pursuant to Rule 15c2–7.

Based on prior industry reports, the Commission estimates that the average time required to enter a disclosure pursuant to the rule is .75 minutes, or 45 seconds. The Commission sees no reason to change this estimate. We estimate that impacted respondents spend a total of .0125 hours per year to comply with the requirements of Rule 15c2–7 (1 notice (x) 45 seconds/notice).

The Commission 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.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 19, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32918 Filed 12–22–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 15c1–7, SEC File No. 270–146, OMB Control No. 3235–0134.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'')(44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rule: Rule 15c1–7 (17 CFR 240.15c1–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 15c1–7 states that any act of a broker-dealer designed to effect securities transactions with or for a customer account over which the broker-dealer (directly or through an agent or employee) has discretion will be considered a fraudulent, manipulative, or deceptive practice under the federal securities laws, unless a record is made of the transaction immediately by the broker-dealer. The record must include (a) the name of the customer, (b) the name, amount, and price of the security, and (c) the date and time when such transaction took place. The Commission estimates that 481 respondents collect information related to approximately 400,000 transactions annually under Rule 15c1–7 and that each respondent would spend approximately 5 minutes on the collection of information for each transaction, for approximately 33,333 aggregate hours per year (approximately 69 hours per respondent).

The Commission may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to PRA that does not display a valid Office of Management and Budget (OMB) control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: December 19, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32917 Filed 12–22–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15c1–6, SEC File No. 270–423, OMB Control No. 3235–0472.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in Rule 15c1–6 (17 CFR 240.15c1–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (Exchange Act).

Rule 15c1–6 states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 481 respondents collect information annually under Rule 15c1–6 and that each respondent would spend approximately 10 hours annually complying with the collection of information requirement (approximately 4,810 hours in aggregate).

The Commission 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.

Background documentation for this information collection may be viewed at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: December 19, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32916 Filed 12–22–11; 8:45 a.m.]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 11a1–1(T), OMB Control No. 3235–0478, SEC File No. 270–428.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'')(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in the following rule: Rule 11a1–1(T) (17 CFR 240.11a1–1(T)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

On January 27, 1976, the Commission adopted Rule 11a1–1(T), to certain exempt transactions of exchange members for their own accounts that would otherwise be prohibited under Section 11(a) of the Exchange Act. The rule provides that a member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for the account of a member; and (3) immediately before executing the order, a member (other than a specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

Without these requirements, it would not be possible for the Commission to monitor its mandate under the Exchange Act to promote fair and orderly markets and ensure that exchange members have, as the principle purpose of their exchange memberships, the conduct of a public securities business.

There are approximately 763 respondents that require an aggregate total of 22 hours to comply with this rule. Each of these approximately 763 respondents makes an estimated 20 annual responses, for an aggregate of 15,260 responses per year. Each response takes approximately 5 seconds to complete. Thus, the total compliance burden per year is 22 hours (15,260 × 5 seconds/60 seconds per minute/60 minutes per hour = 22 hours). The approximate cost per hour is $282, resulting in a total cost of compliance for the annual burden of $6,204 (22 hours @ $282).

Compliance with Rule 11a–1(T) is necessary for exchange members to make transactions for their own accounts under a specific exemption from the general prohibition of such transactions under Section 11(a) of the Exchange Act. Compliance with Rule 11a–1(T) does not involve the collection of confidential information. Rule 11a–1(T) does not have a record retention requirement per se. However, responses made pursuant to Rule 11a–1(T) may be subject to the recordkeeping requirements of Rules 17a–3 and 17a–4.

The Commission 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.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email

to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 19, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32915 Filed 12–22–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29890; 812–13478]

Highland Capital Management, L.P., et al.; Notice of Application

December 19, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

APPLICANTS: Highland Capital Management, L.P. (''Adviser''), Highland Funds I (''Trust'') and Nexbank Securities, Inc. (''Nexbank'').

SUMMARY: *Summary of Application:* Applicants request an order that permits: (a) Certain open-end management investment companies or series thereof to issue shares (''Shares'') redeemable in large aggregations only (''Creation Unit Aggregations''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Unit Aggregations; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on January 17, 2008, and amended on November 21, 2008, July 1, 2011, May 12, 2011, and November 15, 2011.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 13, 2012, and should be accompanied by proof of service on 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, 13455 Noel Road, Suite 800, Dallas, TX 75240.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868 or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

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 Trust is registered as an open-end management investment company under the Act and organized as a Delaware statutory trust. The Trust will initially offer one series, the Highland Senior Loan Portfolio, (''Initial Fund'') whose performance will correspond generally to the price and yield performance of a specified securities index (''Underlying Index'').[1]

2. Applicants request that the order apply to the Initial Fund and any future series of the Trust and any future open-end management investment companies or series thereof that may track specified domestic and/or foreign securities indexes (''Future Funds'').[2] Any Fund will be (a) advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser, and (b) comply with the terms and conditions of the application. Future Funds may be based on Underlying Indexes comprised only of domestic equity securities, fixed income securities or a blend of equity and fixed income securities or international equity securities, fixed income securities or a blend of international equity and fixed income securities (''International Funds'') or Underlying Indexes comprised only of a combination of domestic and international foreign securities (''Global Funds''). The Initial Fund and all Future Funds, together, are the ''Funds.''[3]

3. The Adviser will be registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and will serve as investment adviser to the Funds. The Adviser may enter into sub-advisory agreements with one or more investment advisers as sub-advisers to act as subadvisers to a Fund (each, a ''Sub-Adviser''). Each Sub-Adviser will be registered under the Advisers Act. Nexbank is a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act''). Nexbank will serve as the distributor and principal underwriter of the Shares of Funds (''Distributor''). In the future another broker-dealer registered under the Exchange Act may act as Distributor. No Distributor may be an affiliated person with any Exchange or any Index Provider.

4. Each Fund will consist of a portfolio of securities (''Portfolio Securities'') selected to correspond generally to the price and yield performance of an Underlying Index. No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person of the Trust, any Fund, the Adviser, any Sub-Adviser, or promoter, or of a Distributor.

5. The investment objective of each Fund will be to provide investment returns that closely correspond to the price and performance of its Underlying Index.[4] A Fund will utilize either a

[1] The Underlying Index for the Initial Fund is the Highland/Markit Liquid Loan Index.™

[2] All existing entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that relies on the order will comply with the terms and conditions of the application. An Acquiring Fund (as defined below) may rely on the order only to invest in the Funds and not in any other registered investment company.

[3] Each Fund will comply with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009) before offering Shares.

[4] Applicants represent that at least 80% of each Fund's total assets (''80% Basket'') will be invested in component securities that comprised of its Underlying Index (''Component Securities'') or TBA Transactions (as defined below) representing Component Securities, or in the case of Global and International Funds, Depositary Receipts (defined below) representing such Component Securities. Each Fund may also invest up to 20% of its assets

replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in substantially all the Component Securities in its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold a significant number, but not all of the Component Securities of its Underlying Index.[5] Applicants state that in using the representative sampling strategy, a Fund is not expected to track its Underlying Index with the same degree of accuracy as a Fund would employing the replication strategy. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5 percent.

6. The Trust will sell and redeem Creation Units Aggregations on a ''Business Day,'' which is defined to include any day that the Trust is required to be open under section 22(e) of the Act. Fund Shares will range from $25 to $250 per Share and the price of Creation Unit Aggregations will range from $1 million to $10 million. All orders to purchase Creation Unit Aggregations must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the relevant Fund. An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC,'' and such participant, ''DTC Participant''). Shares of each Fund generally will be purchased in Creation Units Aggregations in exchange for an in-kind deposit by the purchaser of a portfolio of securities (the ''Deposit Securities''), designated by the Adviser, together with the deposit of a specified cash payment (''Cash Amount'' and together with the Deposit Securities, the ''Creation Deposit''). The Cash Amount will be an amount equal to the difference between: (a) The net asset value (''NAV'') per Creation Unit Aggregation of a Fund; and (b) the total aggregate market value per Creation Unit Aggregation of the Deposit Securities.[6] The Trust may permit an in-kind purchase to substitute cash in lieu of some or all of the requisite Deposit Securities under certain circumstances. To preserve maximum efficiency and flexibility, the Trust reserves the right to accept and deliver Creation Unit Aggregations entirely for cash if the Trust and the Adviser believe that doing so would substantially minimize transactional costs or enhance operational efficiencies of the Trust.

7. An investor purchasing or redeeming a Creation Unit Aggregation from a Fund will be charged a fee (''Transaction Fee'') to protect shareholders from the dilutive costs associated with the purchase or redemption of Creation Unit Aggregations.[7] All orders to purchase Creation Unit Aggregations will be placed with the Distributor by or through an Authorized Participant, and it will be the Distributor's responsibility to transmit such orders to the Funds. The Distributor will then furnish the purchaser with a confirmation and a prospectus. In addition, the Distributor will maintain a record of the instructions given to a Fund to implement the delivery of its Shares.

8. Purchasers of Shares in Creation Unit Aggregations may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on one or more national securities exchanges as defined in section 2(a)(26) of the Act (each an ''Exchange''). It is expected that one or more Exchange market maker will be designated to act as a specialist or market maker (''Market Makers'') and maintain a market for Shares trading on the Listing Exchange or another Exchange. Price of Shares trading on an Exchange will be based on a current bid-offer market. The sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

9. Applicants expect that purchasers of Creation Unit Aggregations will include institutional investors and arbitrageurs. Authorized Participants also may purchase or redeem Creation Unit Aggregations in connection with their market making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[8] The price at which Shares trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Unit Aggregations at NAV, which should help to ensure that Shares will not trade at a material discount or premium in relation to their NAV.

10. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund or tender such shares for redemption to the Fund, in Creation Unit Aggregations only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit Aggregation. Redemption requests must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit Aggregation generally will receive (a) Portfolio Securities designated to be delivered for redemptions (''Redemption Securities'') on the date that the request for redemption is submitted and (b) a ''Cash Redemption Payment,'' consisting of an amount calculated in the same manner as the Cash Amount, although the actual amount of the Cash Redemption Payment may differ if the Redemption Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as when the redeeming investor is unable to own a particular Redemption Security.

11. Applicants state that in accepting Deposit Securities and satisfying redemptions with Redemption Securities, Funds will comply with the federal securities laws, including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act'').[9] Deposit Securities and Redemption Securities either (a) will correspond pro rata to the Portfolio

in securities not included in its Underlying Index and other assets, which the Adviser and/or Sub-Adviser believes will assist the Fund in tracking the performance of its Underlying Index.

[5] Using the sampling strategy, the Adviser or Subadviser will select each security for inclusion in the Fund's portfolio to have aggregate investment characteristics, fundamental characteristics, and liquidity measures similar to those of the Fund's Underlying Index, taken in its entirety.

[6] On each Business Day, prior to the opening of trading on each Fund's Listing Exchange (as defined below), a list of the names and the required number of shares of each Deposit Security, included in the current Creation Deposit (based on information at the end of the previous Business Day) for the relevant Fund, along with the Cash Amount will be made available. Any national securities exchange (as defined in section 2(a)(26) of the Act) (''Listing Exchange'') on which Shares are listed will disseminate, every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association, an amount representing on a per Share basis, the sum of the current value of the Deposit Securities and the estimated Cash Amount.

[7] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities.

[8] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[9] In accepting Deposit Securities and satisfying redemptions with Redemption Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the relevant Funds will comply with the conditions of rule 144A.

Securities of a Fund, or (b) will not correspond pro rata to the Portfolio Securities, provided that the Deposit Securities and Redemption Securities (i) consist of the same representative sample of Portfolio Securities designed to generate performance that is highly correlated to the performance of the Portfolio Securities, (ii) consist only of securities that are already included among the existing Portfolio Securities, and (iii) are the same for all Authorized Participants on a given Business Day.[10]

12. Neither the Trust nor any Fund will be marketed or otherwise held out as a traditional open-end investment company or ''mutual fund.'' Instead, each Fund will be marketed as an ''exchange-traded fund'' or an ''ETF''. All marketing materials that describe the features or method of obtaining, buying or selling Creation Unit Aggregations, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire or tender such Shares for redemption to the Fund in Creation Unit Aggregations only. The same approach will be followed in shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to redeem Shares in Creation Unit Aggregations only. Applicants state that Creation Unit Aggregations will be redeemable in accordance with the provisions of the Act. Applicants state that because Creation Unit Aggregations may always be purchased and redeemed at NAV, the market price of the Shares should not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security which is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution system of shares by eliminating price competition from non-contract dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions of Creation Unit Aggregations for International Funds and Global Funds will be contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles in foreign markets in which those Funds invests. Applicants state that delivery cycles for transferring Portfolio Securities to redeeming investors,

[10] In either case, a basket of Deposit Securities and Redemption Securities (and a true pro rata slice of the Portfolio) may differ solely to the extent necessary (1) because it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement, (2) because, in the case of equity securities, rounding is necessary to eliminate fractional shares or lots, that are not tradeable round lots or (3) for temporary periods, to effect changes in the Portfolio Securities as a result of the rebalancing of an Underlying Index. A tradable round lot will be the standard unit of trading in that particular type of security in its primary market.

coupled with local market holiday schedules, will cause a delivery process of up to twelve (12) calendar days. Applicants therefore request relief from section 22(e) in order to provide for payment or satisfaction of redemptions within a longer number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Global and International Fund customarily clear and settle, but in all cases no later than 12 calendar days following the tender of a Creation Unit Aggregation.[11] With respect to Future Funds based on a global or an international Underlying Index, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants state that Congress adopted section 22(e) to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Unit Aggregations of a Fund to be made within the number of days indicated above would not be inconsistent with the spirit and intent of section 22(e). Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for each affected Global Fund and International Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds or International Funds that do not effect redemptions of Creation Unit Aggregations in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies (''Acquiring Management Companies'') and unit investment trusts (''Acquiring Trusts'') registered under the Act that are not sponsored or advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Acquiring Funds'') to acquire shares of a Fund beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit each Fund and/or Broker to sell Shares to Acquiring Funds in excess of the limits of section 12(d)(1)(B).

11. Each Acquiring Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Acquiring Fund Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an ''Acquiring Fund Sub-Adviser''). Any investment adviser to an Acquiring Management Company will be registered under the Advisers Act. Each Acquiring Trust will be sponsored by a sponsor (''Sponsor'').

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither an Acquiring Fund nor an Acquiring Funds Affiliate would be able to exert undue influence over a Fund.[12] To limit the control that an Acquiring Fund may have over a Fund, applicants propose a condition prohibiting the Acquiring Fund Adviser, Sponsor, any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor (''Acquiring Funds' Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Acquiring Fund Sub-Adviser, any person controlling, controlled by or under common control with the Acquiring Fund Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Sub-Adviser or any person controlling, controlled by or under common control with the Acquiring Fund Sub-Adviser (''Acquiring Funds' Sub-Advisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Acquiring Fund or Acquiring Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Sub-Adviser, Sponsor, employee or Sponsor of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Sub-Adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Acquiring Management Company, including a majority of the directors or trustees who are not interested directors or trustees within the meaning of section 2(a)(19) of

[11] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade.

[12] An ''Acquiring Funds Affiliate'' is any Acquiring Fund Adviser, Acquiring Fund Sub-Adviser(s), Sponsor, promoter and principal underwriter of an Acquiring Fund, and any person controlling, controlled by or under common control with any of these entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Acquiring Management Company may invest. In addition, under condition 13, an Acquiring Fund Adviser, or an Acquiring Trust's trustee (''Trustee'') or Sponsor, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Acquiring Fund Adviser, Trustee or Sponsor or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, in connection with the investment by the Acquiring Fund in the Fund. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[13]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure that an Acquiring Fund understands and will comply with the terms and conditions of the requested order, the Acquiring Funds must enter into an agreement with the respective Funds (''Acquiring Fund Agreement''). The Acquiring Fund Agreement will include an acknowledgement from the Acquiring Fund that it may rely on the order only to invest in the Funds and not in any other investment company.

16. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Unit Aggregations by an Acquiring Fund. A Fund would also retain its right to reject any initial investment by an Acquiring Fund in excess of the limits in Section 12(d)(l)(A) of the Act by declining to execute an Acquiring Fund Agreement with an Acquiring Fund.

[13] All references to NASD Conduct Rule 2830 include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

Section 17 of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), from selling any security to or acquiring any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

18. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act in order to permit in-kind purchases and redemptions of Creation Unit Aggregations from the Funds by persons that are affiliated persons or second-tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more affiliated funds. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in any in-kind transactions that would accompany such sales and redemptions with, any Acquiring Fund of which the Fund is an affiliated person or second-tier affiliate.

19. Applicants contend that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Unit Aggregations. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Unit Aggregations will be the same for all purchases and redemptions. Deposit Securities, Redemption Securities, and the balancing Cash Amounts (except for any permitted cash-in-lieu amounts) will be the same regardless of the identity of the purchaser or redeemer. Deposit Securities and Redemption Securities for each Fund will be valued in the same manner as the Portfolio Securities currently held by such Fund, and will be valued in this same manner, regardless of the identity of the purchaser or redeemer. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons of a Fund to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants seek an exemption from Section 17(a) pursuant to Section 17(b) and Section 6(c) of the Act to permit a Fund, to the extent that the Fund is an affiliated person (as defined in Section 2(a)(3)(B) of the Act) of an Acquiring Fund, to sell Shares to, and purchase Shares from, an Acquiring Fund, and to engage in any accompanying in-kind Creation Unit Aggregation transactions.[14] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Shares.[15] Deposit Securities, Redemption Securities, and the balancing cash amounts (except for any permitted cash-in-lieu amounts) will be the same regardless of the identity of the purchaser or redeemer. Applicants believe that any proposed transactions directly between the Funds and Acquiring Funds will be consistent with the policies of each Acquiring Fund. The purchase of Creation Unit Aggregations by an Acquiring Fund directly from a Fund will be accomplished in accordance with the policies and procedures set forth in the Fund's registration statement. The Acquiring Fund Agreement will require any Acquiring Fund that purchases Creation Unit Aggregations directly from a Fund to represent that the purchase of Creation Unit Aggregations from a Fund by an Acquiring Fund will be accomplished in compliance with the

[14] To the extent that purchases of Shares of a Fund occur in the secondary market and through principal transactions directly between an Acquiring Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Unit Aggregations by a Fund to an Acquiring Fund and redemptions of those Shares. The requested relief is also intended to cover the in-kind transactions that would accompany such sales and redemptions.

[15] Applicants acknowledge that receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Acquiring Fund may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

ETF Relief

1. As long as each Fund operates in reliance on the requested order, its Shares will be listed on an Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Unit Aggregations only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or the Bid/Ask Price against such NAV.

4. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

Section 12(d)(1) Relief

Applicants agree that any order granting the requested 12(d)(1) relief will be subject to the following conditions:

5. The members of an Acquiring Funds' Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Acquiring Funds' Advisory Group or the Acquiring Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Fund, it will vote its Shares in the same proportion as the vote of all other holders of the Fund Shares. This condition does not apply to the Acquiring Funds' Sub-Advisory Group with respect to a Fund for which the Acquiring Fund Sub-Adviser or a person controlling, controlled by, or under common control with the Acquiring Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

6. No Acquiring Fund or Acquiring Funds Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Funds Affiliate and the Fund or a Fund Affiliate.

7. The board of directors or trustees of an Acquiring Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Adviser and any Acquiring Fund Sub-Adviser are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Funds Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

8. Once an investment by an Acquiring Fund in Shares exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Trust (''Board''), including a majority of the disinterested directors/trustees, will determine that any consideration paid by the Fund to the Acquiring Fund or an Acquiring Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

9. No Acquiring Fund or Acquiring Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause the Fund to purchase a security in any Affiliated Underwriting.

10. The Board, including a majority of the disinterested trustees, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

11. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

12. Before investing in Shares in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute an Acquiring Fund Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment adviser(s) or their Sponsors or Trustees, as applicable, understand the terms and conditions of the order,

and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of the names of each Acquiring Funds Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the order, the Acquiring Fund Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

13. The Acquiring Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from the Fund by the Acquiring Fund Adviser, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Adviser, Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund Sub-Adviser will waive fees otherwise payable to the Acquiring Fund Sub-Adviser, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Sub-Adviser, or an affiliated person of the Acquiring Fund Sub-Adviser, other than any advisory fees paid to the Acquiring Fund Sub-Adviser or its affiliated person by the Fund, in connection with any investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Sub-Adviser. In the event that the Acquiring Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

14. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

15. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the ct, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

16. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32935 Filed 12–22–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29889; 812–13777]

Rio Tinto plc and Rio Tinto Limited; Notice of Application

December 19, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 3(b)(2) and 45(a) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY: *Summary of Application:* Rio Tinto plc (''RTP'') and Rio Tinto Limited (''RTL'', together with RTP, ''Rio Tinto'' or the ''Group'') seek an order under section 3(b)(2) of the Act declaring Rio Tinto to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Rio Tinto is a leading international mining group. Applicants also seek an order under section 45(a) of the Act granting confidential treatment with respect to certain financial and other information.

Filing Date: The application was filed on May 27, 2010, and amended on December 16, 2010, and July 1, 2011.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 13, 2012, and should be accompanied by proof of service on 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, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, RTP, 2 Eastbourne Terrace, London W2 6LG, United Kingdom and RTL, ABN 96 004 458 404, Level 33, 120 Collins Street, Melbourne, Victoria 3000, Australia.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

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 applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or calling (202) 551–8090.

Applicants' Representations

1. Rio Tinto is an international business involved in each stage of metal and mineral production including finding, developing, mining and processing natural resources such as aluminium, copper, coal, iron ore, uranium, gold and industrial minerals. Rio Tinto is a dual-listed company (''DLC'') comprised of two distinct, commonly controlled corporate entities, RTP and RTL, which operate pursuant to a DLC Sharing Agreement (the ''Sharing Agreement'').[1] RTP is a foreign

[1] Applicants identify the following key principles of the DLC structure: (a) RTP and RTL are each required to have a ''special voting share'' that enables shareholders of both RTP and RTL to vote on key decisions on a joint basis; (b) dividends and capital returns are equalized via a ''DLC Dividend Share'' so that shareholders of each company are effectively in the same economic position as if they held shares in a single enterprise; (c) each of RTP and RTL has a separate but common board of directors, and the directors are authorized to do anything necessary or desirable to maintain the DLC structure; (d) each of RTP and RTL is subject to local laws and listing obligations; (e) for the protection of creditors, RTP and RTL have each executed a deed poll guarantee pursuant to which

private issuer organized under the laws of England and Wales with ordinary shares listed on the London Stock Exchange and Euronext and American Depositary Receipts (''ADRs'') traded on the New York Stock Exchange. RTP's ordinary shares and ADRs are registered under section 12 of the Securities Exchange Act of 1934 (''Exchange Act''). RTL is a foreign private issuer organized under the laws of Australia with shares listed on the Australian Securities Exchange and traded on the over-the-counter market in the United States. RTL's shares are also registered under section 12 of the Exchange Act; it has no ADRs issued or outstanding. RTP historically held a controlling interest in RTL but no longer beneficially owns (directly or indirectly) any shares of RTL.

2. Although RTP and RTL are two distinct corporate entities with separately traded securities, applicants state that pursuant to the Sharing Agreement, each company is required to operate, as far as possible, as if the two companies and their respective subsidiaries were a single enterprise, and holders of RTP and RTL shares have shared rights between them. Applicants state that the DLC structure places the shareholders of both companies in substantially the same position as if they held shares in a single enterprise owning the assets of both companies. The practical effect of the DLC structure has been recognized by Rio Tinto's primary regulators. RTP and RTL file with the Commission a combined Annual Report on Form 20–F with combined financial statements which treat RTP and RTL as a single group.

3. Applicants state that out of an abundance of caution and a concern that RTP, RTL and/or Rio Tinto could be classified as an ''investment company'' under section 3(a)(1)(C) of the Act, Rio Tinto has viewed certain transfers of cash between RTP and RTL as creating ''intra-group receivables'' which are treated as either ''investment securities'' on the balance sheet of the subsidiary distributing the cash or as ''investment income''; this is despite the fact that the cash being distributed is derived from Rio Tinto's operations and absent the DLC structure would not raise concerns under the Act. Applicants further state that Rio Tinto currently actively monitors the movement of funds between subsidiaries in order to maintain RTP's and RTL's status under the Act and that such treatment is limiting Rio Tinto's ability to fund its operating activities in a tax- or capital-efficient manner. Applicants state that in order to adequately fund Rio Tinto's operations and successfully compete in the mining industry, Rio Tinto needs the financial flexibility to freely move funds between subsidiaries in the DLC structure and to quickly capitalize on new opportunities as they arise. Although each of Rio Tinto, RTP and RTL believes it is excepted from the definition of ''investment company'' in section 3(a) of the Act by virtue of section 3(b)(1), each is seeking to reduce any uncertainty about its respective status by having RTP and RTL seek an order of the Commission pursuant to section 3(b)(2) of the Act.

Applicants' Legal Analysis

1. Section 3(a)(1)(A) of the Act defines the term ''investment company'' to include an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Applicants state that Rio Tinto has not and does not hold itself out as being engaged primarily, or propose to engage primarily, in the business of investing, reinvesting or trading in securities within the meaning of section 3(a)(1)(A) of the Act.

2. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40 percent of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis (''asset test'').[2] Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies, and (b) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act. Applicants state that as of December 31, 2010, the percentage of RTP's total assets on an unconsolidated basis (exclusive of Government securities and cash items) which were ''investment securities'' as defined in section 3(a)(2) of the Act was approximately 9.1% and the percentage of RTL's total assets (exclusive of Government securities and cash items) which were ''investment securities'' was approximately 29.2%. Applicants further state that assuming RTP and RTL are treated as a single company for the purposes of testing under the Act, as of December 31, 2010, the percentage of Rio Tinto's total assets (exclusive of Government securities and cash items) which were ''investment securities'' on an unconsolidated basis was 1.7%. However, applicants state that if Rio Tinto were to continue to transfer funds among the Group in a tax- and capital efficient manner, and were to continue to treat intra-group receivables arising from such transfers as ''investment securities'', then either RTP or RTL (and, in effect, Rio Tinto) could run a significant risk of being deemed an ''investment company'' under the ''asset test.''

3. Rule 3a–1 under the Act provides an exemption from the definition of investment company if no more than 45% of a company's total assets consist of, and not more than 45% of its net income over the last four quarters is derived from, securities other than Government securities, securities of majority-owned subsidiaries and primarily controlled companies (''income test''). These percentages are determined on a consolidated basis with the company's wholly-owned subsidiaries. Applicants state that as of December 31, 2010, the percentage of total assets (exclusive of Government securities and cash items) which were ''investment securities'' for RTP and RTL was 10.3% and 24.3% of their total assets, respectively, and the total income derived from such ''investment securities'' (''investment income'') for RTP and RTL was 35.5% and 6% of their total income, respectively, as calculated pursuant to rule 3a–1. However, RTP no longer beneficially owns (directly or indirectly) any shares of RTL, and therefore there is no longer a presumption of ''control'' under section 2(a)(9) of the Act so distributing funds efficiently within the Group could result in a breach of the ''income test.''

4. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or through majority-owned subsidiaries or through controlled companies conducting

they each guarantee certain contractual obligations of the other; and (f) there are protections in the constituent documents of each of RTP and RTL with respect to potential ''change of control'' events so that a person could not take over or gain control of one company without also making an offer for the other company.

[2] ''Government securities'' are defined under section 2(a)(16) of the Act as any securities issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the United States pursuant to the authority granted by the Congress of the united States, or any certificate of deposit for any of the foregoing.

similar types of businesses. Rio Tinto requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

5. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the Commission considers: (a) The issuer's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[3]

a. Historical Development. Rio Tinto's predecessor companies, the Rio Tinto Company and The Consolidated Zinc Corporation, were formed in 1873 and 1905, respectively, to mine ancient copper workings and to treat zinc bearing mine waste. The RTZ Corporation (''RTZ'') was formed in 1962 by a merger of The Rio Tinto Company and the Consolidated Zinc Corporation. At the same time, CRA Limited (''CRA'') was formed by a merger of the Australian interests of The Rio Tinto Company and The Consolidated Zinc Corporation. Between 1962 and 1995, both RTZ and CRA discovered important mineral deposits, developed major mining projects and also grew through acquisitions. RTZ and CRA were unified in 1995 through the DLC structure; RTZ became RTP and CRA became RTL, together known as Rio Tinto. Historically, the vast majority of the revenues of Rio Tinto's predecessor companies have come from their mining and natural resource processing operations.

b. Public Representations of Policy. Rio Tinto states that it has never represented that it is involved in any business other than the finding, developing, mining and processing of the earth's mineral resources. Rio Tinto asserts that it has consistently stated in its annual reports, press releases, filings with the Commission, marketing materials and Web site, that it is a diversified mining and exploration company. Rio Tinto states that it generally does not make public representations regarding its investment securities except as required by its obligation to file periodic reports to comply with federal securities laws. Rio Tinto further states that its press releases and other written communications have emphasized operations and it has never emphasized either its ''investment income'' or the possibility of significant appreciation from its cash management investment strategies as a material factor in its business or future growth.

c. Activities of Officers and Directors. Rio Tinto states that its executive directors and officers spend substantially all of their time directing and managing the diversified mining and related businesses. The Chief Financial Officer of Rio Tinto spends approximately 5% or less of his time overseeing cash management and investment (or ''treasury'') activities, and spends the vast majority of his remaining time advising the Chief Executive Officer and Rio Tinto's boards on strategic initiatives and transactions, overseeing economic analysis and forecasting and financial reporting activities, and overseeing Rio Tinto's taxation policies and meeting with investors. Apart from the Chief Financial Officer, the directors and other officers have little involvement in treasury activities. Applicants state that, as of December 31, 2010, Rio Tinto employed approximately 77,000 people on a global basis, with approximately 73,000 focused on Rio Tinto's operations; approximately 3,700 employees are focused on business support functions, of which fewer than 50 spend any appreciable amount of their time on cash management and treasury policies.

d. Nature of Assets. Applicants state that Rio Tinto is an international mining group, and its assets are mainly goodwill and fixed, tangible assets used in its operations. Rio Tinto states that the value of its ''investment securities'' (as defined in section 3(a)(2) of the Act), including intra-group receivables, was approximately 1.7% of its total assets (exclusive of Government securities and cash items) in accordance with rule 3a–1, and the corresponding values for RTP and RTL were 10.3% and 24.3%, respectively, when calculated pursuant to rule 3a–1. Excluding intra-group receivables from the calculations under rule 3a–1, the percentage of total assets (exclusive of Government securities and cash items) that would be considered ''investment securities'' as of December 31, 2010, for RTP and RTL would have been 1.6% and 1.1%, respectively.

e. Sources of Income and Revenue. Applicants state that both RTP and RTL currently satisfy the income test under rule 3a–1. For the year ended December 31, 2010, Rio Tinto had net income from continuing operations of US$15,281 million, of which approximately 1.1% was ''investment income''. The corresponding values for RTP and RTL were 35.5% and 6%, respectively. Applicants state that in the future, Rio Tinto expects substantially all of its revenues to come from its mining and related operations.

6. RTP and RTL thus assert that Rio Tinto satisfies the standards for an order under section 3(b)(2) of the Act.

Section 45(a) of the Act

1. Section 45(a) of the Act provides that information contained in any application filed with the Commission under the Act shall be made available to the public, unless the Commission finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Applicants request an order pursuant to section 45(a) of the Act granting confidential treatment to certain financial and other information set forth in Exhibit D.

2. Applicants state that Exhibit D contains detailed financial and other information that Rio Tinto does not otherwise disclose. Applicants state that the application provides a description of the nature of Rio Tinto's assets and the sources of its income, and that the publicly available financial data and other information in the application is sufficient to fully apprise any interested member of the public of the basis for the requested relief.

3. Applicants believe that public disclosure of this information about Rio Tinto would cause substantial harm to its competitive and negotiating positions as it would provide competitors and financial counterparties with insight into the assets, liabilities and income of Rio Tinto and its subsidiaries which they would not otherwise have. For these reasons, applicants believe that public disclosure of the information in Exhibit D is neither necessary nor appropriate in the public interest or for the protection of investors.

Applicants' Conditions

Applicants agree that any order granted pursuant to the application will be subject to the following conditions:

1. Rio Tinto (consisting of RTP and RTL) continues to constitute a DLC.

2. None of RTP, RTL or Rio Tinto will hold itself out as being engaged primarily, or propose to engage primarily, in the business of investing, reinvesting, or trading in securities.

3. Rio Tinto (consisting of RTP and RTL) continues to allocate and utilize their accumulated cash and investment securities primarily for bona-fide business purposes arising out of the finding, developing, mining and processing of mineral resources.

[3] *Tonopah Mining Company of Nevada,* 26 SEC 426, 427 (1947).

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32922 Filed 12–22–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No.: 801–68894; Investment Advisers Act of 1940 Release No. 3340]

In the Matter of Royal Oak Capital Management, LLC, 6173 Bellevue Road, Royal Oak, MD 21662; Notice of Intention To Cancel Registration Pursuant to Section 203(H) of the Investment Advisers Act of 1940

December 19, 2011.

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order, pursuant to Section 203(h) of the Investment Advisers Act of 1940 (the ''Act''), cancelling the registration of Royal Oak Capital Management, LLC, hereinafter referred to as the registrant.

Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under Section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall by order, cancel the registration of such person.

The registrant indicated on its most recent Form ADV filing that it is relying on section 203A(a)(1)(A) of the Act to register with the Commission, which prior to September 19, 2011 prohibited an investment adviser from registering with the Commission unless it maintained assets under management of at least $25 million. Effective September 19, 2011, Congress increased the assets under management threshold under section 203A of the Advisers Act to prohibit an investment adviser from registering with the Commission if it is required to be registered in the state in which it maintains its principal office and place of business and has assets under management between $25 million and $100 million. Accordingly, an adviser currently registered with the Commission generally is required to withdraw from registration when its assets under management fall below $90 million, unless the adviser is not required to register in the state where it maintains its principal office and place of business.[1]

The registrant is prohibited from registering as an investment adviser under section 203A of the Act because the Commission believes, based on the facts it has, that the registrant did not at the time of the Form ADV filing, and does not currently, maintain the required assets under management to remain registered with the Commission. Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is no longer eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Any interested person may, by January 13, 2012 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after January 13, 2012, the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

For further information contact: Parisa Haghshenas, at (202) 551–6787 (Office of Investment Adviser Regulation).

[1] Section 203A of the Act generally prohibits an investment adviser from registering with the Commission unless it meets certain requirements. *See* Advisers Act section 203A(a)(2)(B)(ii) (amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010)); Advisers Act rule 203A–1(a); *Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 3221 (June 22, 2011), *available at http://www.sec.gov/rules/final/2011/ia-3221.pdf.*

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[2]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32899 Filed 12–22–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66002; File No. SR–NYSEARCA–2011–94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the ProShares Managed Futures Strategy Fund, ProShares Commodity Managed Futures Strategy Fund and ProShares Financial Managed Futures Strategy Fund Under NYSE Arca Equities Rule 8.200

December 19, 2011.

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 December 5, 2011, 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 Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.200: ProShares Managed Futures Strategy, ProShares Commodity Managed Futures Strategy and ProShares Financial Managed Futures Strategy. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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

[2] 17 CFR 200.30–5(e)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts (''TIRs'') either by listing or pursuant to unlisted trading privileges (''UTP'').[4] The Exchange proposes to list and trade shares (''Shares'') of the following pursuant to NYSE Arca Equities Rule 8.200: ProShares Managed Futures Strategy, ProShares Commodity Managed Futures Strategy and ProShares Financial Managed Futures Strategy (each a ''Fund,'' together, the ''Funds'').[5] Each Fund is a series of the ProShares Trust II (''Trust''), a Delaware statutory trust. ProShare Capital Management LLC (''Sponsor'') is the Trust's Sponsor and Wilmington Trust Company is the Trust's trustee. Brown Brothers Harriman & Co. serves as the administrator (the ''Administrator''), custodian and transfer agent of the Funds. SEI Investments Distribution Co. serves as distributor of the Shares (the ''Distributor'').

The Exchange notes that the Commission has previously approved the listing and trading of issues of TIRs of the Trust on the American Stock Exchange LLC[6] and on NYSE Arca.[7] In addition, the Commission has approved other exchange-traded investment products linked to the performance of underlying commodities and currencies.[8]

The Funds and Their Principal Investment Strategies

According to the Registration Statement, the Funds seek to provide investment results (before fees and expenses) that correspond to the performance of the S&P Dynamic Futures Index (the ''DFI'' or the ''Index'') or to a sub-index of the Index (a ''Sub-Index''). The ProShares Managed Futures Strategy seeks to provide investment results (before fees and expenses) that correspond to the performance of the DFI. The ProShares Commodity Managed Futures Strategy seeks to provide investment results (before fees and expenses) that correspond to the performance of the S&P Dynamic Commodities Futures Index (the ''DCFI''), a Sub-Index of the DFI. The ProShares Financial Managed Futures Strategy seeks to provide investment results (before fees and expenses) that correspond to the performance of the S&P Dynamic Financial Futures Index (the ''DFFI''), another Sub-Index of the DFI.

The Index and each Sub-Index were developed by Standard & Poor's and are long/short rules-based investable indexes designed to attempt to capture the economic benefit derived from both rising and declining trends in futures prices.[9] The Index is composed of unleveraged positions in U.S. exchange-traded futures contracts on sixteen different tangible commodities (''Commodities Futures Contracts''), as well as U.S. exchange-traded futures contracts on eight different financials, such as major currencies and U.S. Treasury securities (''Financials Futures Contracts'' and together with the Commodities Futures Contracts, the ''Index Components'').[10] Commodities Futures Contracts and Financials Futures Contracts each comprise a Sub-Index of the Index: The DCFI and the DFFI, respectively (together, the ''Sub-Indexes'').

In order to achieve the investment objective of the Funds, the Sponsor will invest in: i) exchange-traded futures contracts of the type comprising the Index or Sub-Indexes, as applicable (''Futures Contracts'');[11] and/or ii) under limited circumstances (as further described herein), swap agreements whose value is derived from the level of the Index, a Sub-Index, one or more Futures Contracts, or, in the case of currency-based Financials Futures Contracts, the exchange rates underlying such Financials Futures Contracts.[12] Each Fund may also invest in cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes and repurchase agreements collateralized by government securities) that may serve as collateral for the Futures Contracts or swap agreements. The Sponsor does not expect that the Funds will be invested directly in any commodity or currency.

According to the Registration Statement, each Fund seeks to achieve its investment objective by investing, under normal market conditions,[13] in exchange-traded Futures Contracts. In the event position accountability rules or position limits with respect to a Futures Contract is reached with respect to a Fund, the Sponsor may, in its commercially reasonable judgment, cause such Fund to obtain exposure through swaps whose value is derived from the level of the Index, a Sub-Index, one or more Futures Contracts, or, in the case of currency-based Financials Futures Contracts, the exchange rates underlying such Financials Futures Contracts or invest in swaps if such

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in ''Financial Instruments''. The term ''Financial Instruments'', as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[5] *See* the Trust's Registration Statement on Form S–1, dated November 29, 2011 (File No. 333–178212 (''Registration Statement''). The description of the Funds and the Shares contained herein is based, in part, on the Registration Statement.

[6] *See* Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39) (order approving American Stock Exchange listing and trading of fourteen funds of the Commodities and Currency Trust).

[7] *See* Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91) (order approving Exchange listing and trading of fourteen funds of the Commodities and Currency Trust).

[8] *See, e.g.,* Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR–NYSEArca–2007–91) (order granting accelerated approval for NYSE Arca listing the iShares GS Commodity Trusts); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (order granting accelerated approval for NYSE Arca listing the ETFS Gold Trust); 58365 (August 14, 2008), 73 FR 49522 (August 21, 2008) (order granting accelerated approval for NYSE Arca listing of four CurrencyShares Trusts); 63598 (December 22, 2010), 75 FR 82106 (December 29, 2010) (SR–NYSEArca–2010–98) (order approving listing and trading on the Exchange of WisdomTree Managed Futures Strategy Fund).

[9] Standard & Poor's is not a broker-dealer, is not affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index and Sub-Indexes.

[10] The Index Components are traded on the Chicago Mercantile Exchange, Inc. (''CME''), COMEX (a division of CME), Chicago Board of Trade (''CBOT'', a division of CME), NYMEX (a division of CME), and ICE Futures U.S. (''ICE'') (collectively, the ''Futures Exchanges'').

[11] Futures Contracts will be the same type of contracts as the Index Components, but the expiration dates of such Futures Contracts may differ from the expiration dates of the Index Components at any given point in time.

[12] Terms relating to the Funds and the Shares that are referred to, but not defined herein, are defined in the Registration Statement.

[13] The term ''under normal market circumstances [sic]'' includes, but is not limited to, the absence of extreme volatility or trading halts in the futures 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.

instruments tend to exhibit trading prices or returns that correlate with the Index, the Sub-Indexes or any Futures Contract and will further the investment objective of the Funds.[14] The Funds may also invest in swaps if the market for a specific Futures Contract experiences emergencies (*e.g.,* natural disaster, terrorist attack or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) that would prevent the Funds from obtaining the appropriate amount of investment exposure to the affected Futures Contracts directly.[15]

The Index and the Sub-Indexes

The Index is composed of the Index Components, representing unleveraged long or short positions in U.S. exchange-traded futures contracts in the commodity and financial markets.[16] These Index Components are then formed into ''sectors'' of one or more contracts with similar characteristics. Index Components within each sector are chosen based on fundamental characteristics and liquidity. The Commodities Futures Contracts comprise the DCFI as described below, and the Financials Futures Contracts comprise the DFFI, as described below.

Weightings of the Commodities Futures Contracts are based on generally known world production levels, as adjusted to limit the impact of the energy sector. Weightings of the Financials Futures Contracts are based on, but not directly proportional to, gross domestic product (''GDP'').

The positions the Index (and accordingly, each Sub-Index) takes in the Index Components are not long-only, but are set by sector, long, short or, in the case of Energy, flat (zero-weight) based on the relation of the current aggregate price input of the Index Components in a particular sector (*e.g.,* Grains) with a seven-month weighted moving average of the aggregate price inputs of the same Index Components.

The following charts reflect the initial 2011 weighting schemes for the Index and each Sub-Index. For the Index and the DCFI, the sector weights will vary based on whether or not Energy is positioned long or flat. If Energy is flat, its weight is redistributed pro-rata among the other sectors. Since the DFFI has no commodity exposure, the weights of the sectors and the Index Components that comprise it are not impacted by the long or flat positioning of the Energy sector.

For the Index, if Energy is positioned ''long,'' the initial Index weights, together with information about the exchange and trading hours for each Futures Contract, are as follows:

INDEX WEIGHTS WITH ENERGY ''LONG''

Sub-Index	Weight (percent)	Sector	Weight (percent)	Component	Weight (percent)	Exchange	Trading hours [17]
DCFI	50	Energy	14.12	Light Crude	10.20	NYMEX (CME)	6:00 pm–5:15 pm next day.
				Heating Oil	1.54	NYMEX (CME)	6:00 pm–5:15 pm next day.
				RBOB Gasoline	1.40	NYMEX (CME)	6:00 pm–5:15 pm next day.
				Natural Gas	0.98	NYMEX (CME)	6:00 pm–5:15 pm next day.
		Industrial Metals	5.02	Copper	5.02	COMEX (CME)	6:00 pm–5:15 pm next day.
		Precious Metals	3.79	Gold	3.22	COMEX (CME)	6:00 pm–5:15 pm next day.
				Silver	0.57	COMEX (CME)	6:00 pm–5:15 pm next day.
		Livestock	5.27	Lean Hogs	2.04	CME	**.[18]
				Live Cattle	3.23	CME	**.[19]
		Grains	13.85	Corn	5.75	CBOT (CME)	7:00 pm–8:15 am; 10:30 am–2:15 pm
				Soybeans	3.37	CBOT (CME)	7:00 pm–8:15 am; 10:30 am–2:15 pm
				Wheat	4.73	CBOT (CME)	7:00 pm–8:15 am; 10:30 am–2:15 pm
		Softs	7.95	Coffee	1.26	ICE	3:30 am–2:00 pm
				Cocoa	0.42	ICE	4:00 am–2:00 pm
				Sugar	3.58	ICE	3:30 am–2:00 pm
				Cotton	2.69	ICE	9:00 pm–2:30 pm next day.
DFFI	50	Australian Dollar	1.67	Australian Dollar		CME	6:00 pm–5:15 pm next day.
		British Pound	3.08	British Pound		CME	6:00 pm–5:15 pm next day.
		Canadian Dollar	2.10	Canadian Dollar		CME	6:00 pm–5:15 pm next day.
		Euro	15.67	Euro		CME	6:00 pm–5:15 pm next day.

[14] To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

[15] According to the Registration Statement, the Sponsor will also attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk, as described in the Registration Statement.

[16] As set forth in the Index weighting scheme example below, the commodities portion of the Index consists of multiple commodity sectors (*e.g.,* Energy, Industrial Metals) and each sector is assigned a percentage sector weight. Each sector, in turn, consists of one or more components, each with an assigned component weight. Similarly, the financial markets portion of the Index consists of multiple foreign currency and U.S. Treasury sectors (*e.g.,* Australian Dollar and U.S. Treasury Notes), each with an assigned sector weight. Each such sector has one component, with an assigned component weight.

INDEX WEIGHTS WITH ENERGY "LONG"—Continued

Sub-Index	Weight (percent)	Sector	Weight (percent)	Component	Weight (percent)	Exchange	Trading hours [17]
		Japanese Yen	7.31	Japanese Yen		CME	6:00 pm–5:15 pm next day.
		Swiss Franc	0.70	Swiss Franc		CME	6:00 pm–5:15 pm next day.
		U.S. Treasury Notes [20].	9.74	U.S. Treasury Notes.		CBOT (CME)	6:30 pm–5:00 pm next day.
Totals	100		100		100		

[17] All times are Eastern time ("E.T."), inclusive of electronic and open outcry trading sessions, as applicable.
[18] Live Cattle trade from 10:05 a.m. Monday to 2:55 p.m. Friday, with daily trading halts from 5 p.m. to 6 p.m.
[19] Lean Hogs trade from 10:05 a.m. Monday to 2:55 p.m. Friday, with daily trading halts from 5 p.m. to 6 p.m.
[20] "U.S. Treasury Notes" refer to 10 year U.S. Treasury Note futures.
[21] "U.S. Treasury Bonds" refer to those futures with underlying bonds of a remaining term to call or maturity of 15–25 years.

For the DCFI, if Energy is positioned "flat," the initial Index weights will be as follows:

INDEX WEIGHTS WITH ENERGY "FLAT"

Sub-Index	Weight (percent)	Sector	Weight (percent)	Component	Weight (percent)
DCFI	41.78	Energy	0.00	Light Crude	0.00
				Heating Oil	0.00
				RBOB Gasoline	0.00
				Natural Gas	0.00
		Industrial Metals	5.84	Copper	5.84
		Precious Metals	4.41	Gold	3.75
				Silver	0.66
		Livestock	6.13	Lean Hogs	2.38
				Live Cattle	3.76
		Grains	16.13	Corn	6.70
				Soybeans	3.92
				Wheat	5.51
		Softs	9.26	Coffee	1.47
				Cocoa	0.48
				Sugar	4.17
				Cotton	3.13
DFFI	58.22	Australian Dollar	1.94	Australian Dollar	1.94
		British Pound	3.59	British Pound	3.59
		Canadian Dollar	2.44	Canadian Dollar	2.44
		Euro	18.24	Euro	18.24
		Japanese Yen	8.51	Japanese Yen	8.51
		Swiss Franc	0.81	Swiss Franc	0.81
		U.S. Treasury Notes	11.34	U.S. Treasury Notes	11.34
		U.S. Treasury Bonds	11.34	U.S. Treasury Bonds	11.34
Totals	100		100		100

For the DCFI, if Energy is positioned "long" the initial Sub-Index weightings would be as follows:

DCFI WEIGHTS WITH ENERGY "LONG"

Sector	Weight (percent)	Component	Weight (percent)
Energy	28.24	Light Crude	20.40
		Heating Oil	3.08
		RBOB Gasoline	2.80
		Natural Gas	1.96
Industrial Metals	10.04	Copper	10.04
Precious Metals	7.58	Gold	6.44
		Silver	1.14
Livestock	10.54	Lean Hogs	4.08
		Live Cattle	6.46

DCFI WEIGHTS WITH ENERGY "LONG"—Continued

Sector	Weight (percent)	Component	Weight (percent)
Grains	27.70	Corn	11.50
		Soybeans	6.74
		Wheat	9.46
Softs	15.90	Coffee	2.52
		Cocoa	0.84
		Sugar	7.16
		Cotton	5.38
Total	100		100

For the DCFI, if Energy is initially positioned ''flat'' the weights would be as follows:

DCFI WEIGHTS WITH ENERGY "FLAT"

Sector	Weight (percent)	Component	Weight (percent)
Energy	0.00	Light Crude	0.00
		Heating Oil	0.00
		RBOB Gasoline	0.00
		Natural Gas	0.00
Industrial Metals	13.98	Copper	13.98
Precious Metals	10.56	Gold	8.99
		Silver	1.58
Livestock	14.69	Lean Hogs	5.69
		Live Cattle	8.99
Grains	38.61	Corn	16.04
		Soybeans	9.39
		Wheat	13.18
Softs	22.16	Coffee	3.53
		Cocoa	1.16
		Sugar	9.98
		Cotton	7.50
Total	100		100

Finally, for the DFFI, the initial weights are as follows:

DFFI WEIGHTS

Sector	Weight (percent)	Component	Weight (percent)
Australian Dollar	3.34	Australian Dollar	3.34
British Pound	6.16	British Pound	6.16
Canadian Dollar	4.20	Canadian Dollar	4.20
Euro	31.34	Euro	31.34
Japanese Yen	14.62	Japanese Yen	14.62
Swiss Franc	1.40	Swiss Franc	1.40
U.S. Treasury Notes	19.48	U.S. Treasury Notes	19.48
U.S. Treasury Bonds	19.48	U.S. Treasury Bonds	19.48
Total	100		100

Sectors are rebalanced monthly to the applicable above-mentioned weights; the weighting of each individual Index Component within a particular sector is rebalanced annually.

Energy's Short Exemption

If Energy receives a negative price signal (as determined by the weighted moving average, as discussed below), it is positioned flat (zero-weight) rather than short. This is due to the ''risk of ruin'' inherent in the Energy sector because of the concentration of supply in a relatively small number of production locales. If supply from these locales were to be disrupted (whether by war, terrorism, or other events), the price of the Energy sector within the Index and the DCFI is exposed to large

scale price increases regardless of the current trend and position setting. This would expose the Index and the DCFI to significant, if not total, losses in such a circumstance. As such, the Energy sector is positioned flat in a negative price environment and the weight it would otherwise receive is redistributed pro rata among the other sectors of the Index and the DCFI, as applicable.

Determining the Long/Short Positioning of the Sectors

The rule for the Index and each Sub-Index regarding long or short positions is summarized as follows:

- Long positions are tracked when a sector's current aggregate 1-month price change is greater than or equal to the exponential average of the past seven monthly price inputs; and
- Short positions (or flat, in the case of Energy) are tracked when a sector's current 1-month price change is less than the exponential average of the past seven monthly price inputs.

Monthly positions are determined on the second to last DFI business day of the month (defined as the position determination date, or PDD) when the monthly percentage change of an Index Component's price is compared to past monthly price changes, exponentially weighted to give greatest weight to the most recent return and least weight to the return seven months prior. The weighted sum of the percentage changes of all the Index Component prices equals the daily movement of the Index.

To create an exponential average for comparison, price inputs (percentage change from current and previous PDDs) are weighted per the schedule below. Due to this weighting methodology, current price movements are more important than those of the more distant past.

Number of months	Weight (percent)
7	2.32
6	3.71
5	5.94
4	9.51
3	15.22
2	24.34
1	38.95
SUM	100.00

Because this valuation is done on a sector basis, all the Index Components within a particular sector will be set long, short (or flat, in the case of Energy) upon each monthly rebalancing.

Sector Rebalancing

While sector weights are fixed and rebalanced back to their base weight monthly, Index Components that are part of a multicomponent sector (energy, livestock, grains, and precious metals) are only reset back to their base weight within their sector during the first five business days of February. For example (assuming Energy is long), the Japanese Yen (a single component sector) and Grains (a multi-component sector) will rebalance to 6.85% and 11.16% of the Index respectively on the roll date, as described below. However, the individual components within the grains sector will only rebalance to their base weight at the beginning of the year. During the year, they ''float'' within the 11.16% Index Grains weighting.

During this monthly rebalancing, the Index will also ''roll'' certain of its positions from the current contract to a contract further from settlement.[22]

Net Asset Value (''NAV'')

The NAV in respect of each Fund means the total assets of such Fund including, but not limited to, all cash and cash equivalents or other debt securities less total liabilities of such Fund, each determined on the basis of generally accepted accounting principles in the United States, consistently applied under the accrual method of accounting. In particular, NAV will include any unrealized profit or loss on open Futures Contracts and other holdings, if any, and any other credit or debit accruing to a Fund but unpaid or not received by such Fund. The NAV per Share of each Fund will be computed by dividing the value of the net assets of such Fund (*i.e.,* the value of its total assets less total liabilities) by its total number of Shares outstanding. Expenses and fees will be accrued daily and taken into account for purposes of determining NAV. The NAV for the Funds linked to the DFI and DFFI will be calculated daily by the Administrator at 3 p.m. E.T. and will be disseminated daily to market participants. The NAV for the Fund linked to the DCFI is calculated daily at 2:30 p.m., E.T.[23]

In calculating the NAV of each Fund, all open Futures Contracts will be calculated at their then current market value, as described in the Registration Statement. The current market value of all open Futures Contracts, to the extent applicable, will be based upon the settlement price for that particular Futures Contract on the date with respect to which NAV is being determined, as described in the Registration Statement.

The settlement value of a Fund's swap agreements, as applicable, will be determined by applying the then-current disseminated value for the Index Components to the terms of the Funds' swap agreements. However, in the event that an underlying Futures Contract is not trading due to the operation of daily limits or otherwise, the Sponsor may in its sole discretion choose to fair value the applicable Index or Sub-Index level in order to value a Fund's swap agreements for purposes of NAV calculation.

The Exchange will obtain a representation (prior to listing of each Fund) from the Trust that the NAV per Share will be calculated daily and made available to all market participants at the same time.

Indicative Optimized Portfolio Value (''IOPV'')

According to the Registration Statement, the IOPV is an indicator of the value of Futures Contracts and other applicable holdings, cash and receivables less liabilities of each Fund at the time the IOPV is disseminated.

For each Fund, the IOPV will be widely disseminated on a per Share basis by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session (9:30 a.m. to 4 p.m., E.T.).[24] The value of a Share may be influenced by non-concurrent trading hours between NYSE Arca and the applicable Futures Exchanges trading Futures Contracts when the Shares are traded on NYSE Arca after normal trading hours of such Futures Exchanges. The IOPV will be updated during the NYSE Arca Core Trading Session when applicable Futures Exchanges are trading any Futures Contracts held by the Funds. However, the IOPV that will be disseminated between 2 p.m. E.T. and

[22] The Index is composed of Index Components, which are futures contracts. In order to maintain consistent exposure to the Index Components, each Index Component contract must be sold prior to its expiration date and replaced by a contract maturing at a specified date in the future. This process is known as rolling. Index Component contracts are rolled periodically. The rolls are implemented pursuant to a roll schedule over a five-day period from the first through the fifth Index business days of the month. An Index business day is any day on which the majority of the Index Components are open for official trading and official settlement prices are provided, excluding holidays and weekends. The roll schedule is set forth in the Registration Statement.

[23] The Exchange stated that ''The NAV for the Fund linked to the DCFI which is calculated daily at 2:30 p.m. E.T. will also be disseminated daily to market participants.'' *See* electronic mail correspondence, dated December 15, 2011, from Tim Malinowski, Senior Director, NYSE Euronext, to Kristie Diemer, Special Counsel, Commission.

[24] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IOPVs published on CTA or other data feeds.

the close of the NYSE Arca Core Trading Session will be impacted by static values for certain Futures Contracts.[25] For each Fund, the IOPV will be calculated by NYSE Arca throughout the NYSE Arca Core Trading Session using the prior day's closing NAV of such Fund as a base and updating throughout the trading day changes in the value of each Fund's holdings. The IOPV should not be viewed as an actual real time update of the NAV because NAV is calculated only once each trading day at 3 p.m. E.T. (at 2:30 p.m. E.T. for the DCFI). The IOPV also should not be viewed as a precise value of the Shares.

According to the Registration Statement, dissemination of the IOPV provides additional information that is not otherwise available to the public in such form and may be useful to investors and market professionals in connection with the trading of Shares.

Creation and Redemption of Shares

According to the Registration Statement, each Fund will create and redeem Shares from time to time, but only in one or more Creation Units. A Creation Unit is a block of 50,000 Shares. Creation Units may be created or redeemed only by authorized participants, as described in the Registration Statement. Except when aggregated in Creation Units, the Shares will not be redeemable securities. The Sponsor will make available on a daily basis the total payment required to create each Creation Unit of a Fund on the purchase order date in connection with the issuance of the respective Shares. Authorized participants may pay a fixed and/or variable transaction fee in connection with each order to create or redeem a Creation Unit. Authorized participants may sell the Shares included in the Creation Units they purchase from the Funds to other investors. On any business day, an authorized participant may place an order prior to 10:45 a.m. E.T. with the Distributor to create one or more Creation Units. The total cash payment required to create each Creation Unit will be the NAV of 50,000 Shares of the applicable Fund on the purchase order date plus the applicable transaction fee.

According to the Registration Statement, the procedures by which an authorized participant can redeem one or more Creation Units will mirror the procedures for the creation of Creation Units. On any business day, an authorized participant may place an order prior to 10:45 a.m. E.T. with the Distributor to redeem one or more Creation Units. Individual shareholders may not redeem directly from a Fund.

By placing a redemption order, an authorized participant agrees to deliver the Creation Units to be redeemed through the Depository Trust Company's book-entry system to a Fund not later than noon (E.T.), on the third business day immediately following the redemption order date (T+3). The redemption proceeds from a Fund will consist of the cash redemption amount. The cash redemption amount is an amount of cash equal to the NAV of the number of Creation Unit(s) of a Fund requested in the authorized participant's redemption order as of the time of the calculation of the Fund's NAV on the redemption order date, less transaction fees, as described in the Registration Statement.

Availability of Information Regarding the Shares

The Web site for the Funds (*www.proshares.com*) and/or the Exchange, which are publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV per Share; (b) calculation of the premium or discount of the closing market price against the NAV per Share; (c) the prospectus; and (d) other applicable quantitative information.

The Exchange also will disseminate on a daily basis via the Consolidated Tape Association (''CTA'') information with respect to the recent NAV, and Shares outstanding. The Exchange will also make available on its Web site (*http://www.nyse.com*) daily trading volume of the Shares, closing prices of the Shares, and the NAV per Share. The intra-day, closing, and settlement prices of the Futures Contracts are also readily available, as applicable, from the respective Futures Exchanges.[26] Quotation and last sale information for the Shares will be available via the CTA high-speed line.

Portfolio Disclosure

Each Fund's total portfolio composition will be disclosed on such Fund's Web site or another relevant Web site as determined by the Trust and/or the Exchange.[27] The Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names, notional value (in U.S. dollars) and number of Futures Contracts or units of swaps held by a Fund, if any, cash equivalents and the amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Participants, so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of the Funds through the Funds' Web site, and/or at the Exchange's Web site.

Availability of Information About the Index and Sub-Indexes

The daily closing Index level and the percentage change in the daily closing Index level for the Index and each Sub-Index will be publicly available from one or more major market data vendors. Data regarding the Index and each Sub-Index, updated every 15 seconds during the NYSE Arca Core Trading Session, is also available from Standard & Poor's on a subscription basis. Several independent data vendors also package and disseminate Index and Sub-Index data in various value-added formats (including vendors displaying both Index constituents and Index levels and vendors displaying Index levels only). Data regarding the Index Components is also available from the Web sites of the Futures Exchanges. Data regarding the commodities, currencies and Treasury securities underlying the Index Components is publicly available from various financial information service providers.

Criteria for Initial and Continued Listing

The Funds will be subject to the criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto for initial and continued listing of the Shares.

The anticipated minimum number of Shares for each Fund to be outstanding at the start of trading will be 100,000 Shares. The Exchange believes that this anticipated minimum number of Shares for each Fund to be outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the objectives of each Fund. The Exchange represents that, for the initial and continued listing of the Shares, the Funds must be in compliance with

[25] The value of the IOPV will be based on the underlying Futures Contracts. Once a particular Futures Contract closes for trading, a static value for that Futures Contract will be used to calculate the IOPV.

[26] *See* note 10, *supra.*

[27] The Exchange has clarified that each Fund's total portfolio composition will be disclosed only on such Fund's Web site for purposes of this proposed rule change. *See* electronic mail correspondence, dated December 15, 2011, from Tim Malinowski, Senior Director, NYSE Euronext, to Kristie Diemer, Special Counsel, Commission.

NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act.

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 a.m. to 8 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6(a), 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 trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in TIRs to facilitate surveillance. See ''Surveillance'' below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. 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 underlying Futures Contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule [28] or by the halt or suspension of trading of the underlying Futures Contracts.

The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IOPV, the level of the Index (or Sub-Index) or the value of the underlying Futures Contracts occurs. If an interruption to the dissemination of the IOPV, the level of the Index (or Sub-Index) or the value of the underlying Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including TIRs, to monitor trading in the Shares. 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 Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. 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.

The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the Futures Exchanges, all of which are members of the Intermarket Surveillance Group (''ISG'').[29]

In addition, for components traded on exchanges, not more than 10% of the weight of a Fund's portfolio in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

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 ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated, as well as during the Core Trading Session where the IOPV may be based in part on static underlying values; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) 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; (4) how information regarding the IOPV 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 Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from the Funds will receive a prospectus. ETP Holders purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the Commodity Futures Trading Commission has regulatory jurisdiction over the trading of futures contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Funds. The Bulletin will disclose that information about the Shares of the Funds is publicly available on the Funds' Web site.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [30] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities

[28] *See* NYSE Arca Equities Rule 7.12.

[29] A list of ISG members is available at *www.isgportal.org*. The Exchange notes that not all components of the portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[30] 15 U.S.C. 78f(b)(5).

Rule 8.200 and Commentary .02 thereto. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange 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. The Futures Contracts are traded on the Futures Exchanges, each of which is an ISG member, and information regarding trading in the Index Components is available from the Web sites of the respective Futures Exchanges and from major market data vendors. The daily closing Index level and the percentage change in the daily closing Index level for the Index and each Sub-Index will be publicly available from one or more major market data vendors. Data regarding the Index and each Sub-Index, updated every 15 seconds during the NYSE Arca Core Trading Session, is also available from Standard & Poor's on a subscription basis. Standard & Poor's has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index and Sub-Indexes. Data regarding the commodities, currencies and Treasury securities underlying the Index Components is publicly available from various financial information service providers. The Exchange may halt trading during the day in which an interruption to the dissemination of the IOPV, the level of the Index (or Sub-Index) or the value of the underlying Futures Contracts occurs. If an interruption to the dissemination of the IOPV, the level of the Index (or Sub-Index) or the value of the underlying Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Quotation and last sale information for the Shares will be available via CTA. Each Fund's total portfolio composition will be disclosed on the Funds' Web site.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. The NAV per Share will be calculated daily and made available to all market participants at the same time. One or more major market data vendors will disseminate for the Funds on a daily basis information with respect to the recent NAV per Share and Shares outstanding. For each Fund, the IOPV will be widely disseminated on a per Share basis by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session.

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 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 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 the Funds' holdings, IOPV, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–2011–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–94. 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 20549–1090, on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* 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–2011–94 and should be submitted on or before January 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Secretary.

[FR Doc. 2011–32878 Filed 12–22–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66004; File No. SR–Phlx–2011–155]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Certain Stock Execution Clerks and the Trading Floor Personnel Registration Fee

December 19, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the Fees for Certain Stock Execution Clerks from Section VI of the Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov/,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the Fees for Certain Stock Execution Clerks from the Fee Schedule and amend the Trading Floor Registration Fee to clarify that the fee applies to Clerks and Inactive Nominees.

Stock Execution Clerks

A stock execution clerk is currently defined in Exchange Rule 1090 as any clerk other than a specialist clerk on the Exchange trading floor who functions as an intermediary in a transaction (i) consummated on the Exchange; (ii) entered verbally for execution other than on the Exchange; or (iii) entered into a third party system designed to execute transactions other than on the Exchange.[4] All stock execution clerks must register as such with the Exchange.[5]

Generally, ''stock execution'' refers to the service used by options traders to hedge their options trades with the underlying stock. Although stock execution is often done electronically, stock execution clerks provide a service to Exchange members on the options floor by accepting orders for the purchase and sale of securities underlying options transactions. Once such orders are accepted, the stock execution clerk forwards such orders to the appropriate marketplace for execution. The transactions executed are typically hedging transactions in underlying stocks for Exchange specialists and Registered Options Traders.[6] The transaction may be contingent on an options transaction[7] or may stand independently (''stand-alone equity orders'').

The Exchange established this fee in 2007 to assess fees commensurate with the activities of stock execution clerks that handle stand-alone equity orders (i.e. orders that are not contingent on an options transaction).[8] For those stock execution clerks that handle orders that are contingent on an options transaction, i.e. orders that are packaged with an options trade, the Exchange filed to assess charges associated with those contingency orders, such as option transaction charges. The Exchange, however, does not assess fees in connection with stand-alone equity orders, which may be handled by a variety of intermediaries and which may be executed on different equity markets. The Exchange established this fee because these clerks generally are not subject to fees for doing business from the Exchange's options floor.

The Exchange is proposing to eliminate this fee because there are no clerks registered as stock execution clerks today.[9]

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Exhibit 1 to the proposed rule change stated that December 1, 2011 is the operative date of the proposed rule change. The Exchange represents that the operative date of the proposed rule change is instead January 3, 2012. *See* email from Angela S. Dunn, Assistant General Counsel, Exchange, to Nicholas Shwayri, Attorney-Advisor, Division of Trading and Markets, Commission, dated December 16, 2011.

[4] *See* Exchange Rule 1090, Commentary .01(a). Further, No Stock Execution Clerk shall: (i) act as an intermediary in any transaction other than under the direct supervision of a member; (ii) enter into any clearing transaction or participate in any clearing process; (iii) have discretion or independent authority over any account or transaction. *See* Exchange Rule 1090, Commentary .01(d).

[5] Any member or member organization engaged as a stock execution clerk shall register as such with the Exchange's Membership Department. A stock execution clerk that performs any function other than a solely clerical or ministerial function shall, prior to performing any function as a stock execution clerk, (i) comply with the registration requirement(s) set forth in Exchange Rule 604, where applicable; (ii) disclose in detail to the Exchange, on an annual basis, the specific nature of such additional function(s); and (iii) in accordance with Exchange Rule 748, submit to the Exchange written supervisory procedures relating to such member or member organization's activities as a stock execution clerk. *See* Exchange Rule 1090, Commentary .01(b).

[6] A Registered Options Trader (''ROT'') includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[7] A contingency order is a limit or market order to buy or sell that is contingent upon a condition being satisfied while the order is at the post. For certain options contingency orders, the contingency involves buying or selling the underlying security (generally called ''stock'' in this proposal). *See* Exchange Rule 1066(c).

[8] *See* Securities Exchange Act Release No. 56221 (August 8, 2007), 72 FR 45855 (August 15, 2007) (SR–Phlx–2007–48).

[9] In the instance that a clerk registers as a stock execution clerk in the future, that clerk would be billed the newly named ''Clerk Fee.'' If the Exchange determined to assess Fees for Certain Stock Execution Clerks it would file with the Commission to reinstitute the fee.

Trading Floor Personnel Registration Fee

The Exchange currently assesses a Trading Floor Personnel Registration Fee of $100 per month on individuals who are employed by such member organizations and who work on the Exchange's trading floor, such as clerks (for purposes of this fee a clerk includes an Inactive Nominee), interns and stock execution clerks that handle equity orders that are part of an options contingency order and other associated persons. This fee is not imposed on permit holders.

The Exchange proposes to continue assessing the fee as it is being assessed today, except the Exchange proposes to rename the fee as a ''Clerk Fee'' and also clarify that the fee is imposed on any registered on-floor person employed by or associated with a member or member organization pursuant to Rule 1090, including an Inactive Nominee pursuant to Rule 1090. All non-members and Clerks are required to register pursuant to Rule 620, entitled ''Trading Floor Registration.'' [10] Both Inactive Nominees and interns are clerks pursuant to Rule 1090. This fee will not be imposed on permit holders, as is the case today. The Exchange is proposing this text change to better describe the categories of non-members that are subject to the fee.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.[11]

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to eliminate the Fees for Certain Stock Execution Clerks because there are no clerks today registered in this capacity. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to rename the ''Trading Floor Personnel Registration Fee'' as the ''Clerk Fee'' and amend the text of the Fee Schedule to better explain the categories of persons subject to this fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2011–155 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–155. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–155 and should be submitted on or before January 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[10] All trading floor personnel, including clerks, interns, stock execution clerks and any other associated persons, of a member organization not required to register pursuant to Rule 620(a) must: (i) Register as such with the Exchange by completing the appropriate form(s) for non-registered persons (with periodic updates submitted by the member organization, as determined by the Exchange); and (ii) submit hard copy fingerprint cards or results of processed cards to FINRA for processing. Further, the Exchange may require successful completion of an examination, in addition to requirements imposed by other Exchange Rules. The Exchange may also require periodic examinations due to changes in trading rules, products or automated systems. *See* Exchange Rule 620.

[11] The Commission notes that the Exhibit 1 to the proposed rule change stated that January 3, 2011 is the operative date of the proposed rule change. The Exchange represents that the operative date of the proposed rule change is instead January 3, 2012. *See supra* note 3.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66005; File No. SR–Phlx–2011–174]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Strategy Executions and the Monthly Cap

December 19, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I 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 its Fee Schedule to exclude all dividend,[3] merger,[4] short stock interest[5] and reversal[6] and conversion[7] strategies (collectively ''Strategy Executions'') from the Monthly Firm Fee Cap[8] and the Monthly Cap.[9]

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

The text of the proposed rule change is available on the Exchange's Web site at, *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section II of the Exchange's Fee Schedule[10] entitled ''Equity Option Fees'' to exclude Strategy Executions from the Monthly Firm Fee Cap and the Monthly Cap.

Currently, Specialist,[11] Registered Options Trader,[12] SQT[13] and RSQT,[14] Professional,[15] Firm and Broker-Dealer equity option transaction fees are capped at $1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. Equity option transaction fees for dividend, merger and short stock interest strategies combined are further capped at the greater of $10,000 per member or $25,000 per member organization per month when such members are trading in their own proprietary accounts. Specialist, ROT, SQT and RSQT, Professional, Firm and Broker-Dealer options transaction fees in Multiply Listed Options are capped at $500 per day for reversal and conversion strategies executed on the same trading day in the same options class (''Reversal and Conversion Cap''). The Exchange is proposing to exclude the Strategy Executions, which are already subject to caps today, from the Monthly Firm Fee Cap and the Monthly Cap.

The Exchange is also proposing to amend the name of the ''Monthly Cap'' to the ''Monthly Market Maker Cap'' to better reflect the market participants that are eligible for the cap.[16] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. *See* Section II of the Fee Schedule.

[4] A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock. *See* Section II of the Fee Schedule.

[5] A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. *See* Section II of the Fee Schedule.

[6] Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration.

[7] Conversions are established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.

[8] The Monthly Firm Fee Cap is currently $75,000. Firm equity option transaction charges, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. The Firm equity options transaction charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. Firms that (i) are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Monthly Firm Fee Cap will be assessed a $0.05 per contract fee. See Securities Exchange Act Release No. 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011) (SR–Phlx–2011–07).

[9] ROTs and Specialists are currently subject to a Monthly Cap of $550,000. The trading activity of separate ROTs and Specialist member organizations will be aggregated in calculating the Monthly Cap if there is at least 75% common ownership between the member organizations. In addition, ROTs and Specialists that (i) are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Monthly Cap will be assessed a $0.05 per contract fee. *See* Securities Exchange Act Release No. 64113 (March 23, 2011), 76 FR 17468 (March 29, 2011) (SR–Phlx–2011–36).

[10] Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed.

[11] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[12] A Registered Options Trader (''ROT'') includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[13] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[14] An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[15] The Exchange defines a ''professional'' as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter ''Professional'').

[16] The Exchange market maker category includes Specialists (*see* Rule 1020) and Registered Options Traders (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders or SQTs (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders or RSQTs (*see* Rule 1014(b)(ii)(B)). This

Exchange also proposes to amend all references in the Fee Schedule to reflect the new name of the cap.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [17] in general, and furthers the objectives of Section 6(b)(4) of the Act [18] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposal to exclude the Strategy Executions from the benefit of either the Monthly Firm Fee Cap or the Monthly Cap is reasonable because those strategies are already subject to caps. Firms, ROTs and Specialists have the ability to not pay transaction fees once either the Monthly Firm Fee Cap or the Monthly Cap, as applicable, is reached and therefore the Exchange believes it is reasonable to exclude Strategy Executions, which already have the benefit of caps, from receiving a second cap.

The Exchange believes that it is equitable and not unfairly discriminatory to exclude Strategy Executions from the Monthly Firm Fee Cap or the Monthly Cap because only certain participants are impacted, namely Firms, ROTs and Specialists, as they are the only ones receiving the benefit of the Monthly Firm Fee Cap or the Monthly Cap, as applicable. Other market participants are not impacted because they are not subject to another cap. Therefore, the Exchange believes that this fee is being uniformly applied to those participants subject to caps. In addition, NYSE Amex LLC also excludes certain strategy executions from its monthly firm fee cap.[19]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–174 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–174. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–174, and should be submitted on or before January 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32889 Filed 12–22–11; 8:45 am]

BILLING CODE 8011–01–P

would also include Directed Participants. The term ''Directed Participant'' applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] *See* SR–NYSEAMEX–2011–94 (a proposal to exclude reversals and conversions, dividend spreads, box spreads, short stock interest spreads, merger spreads, and jelly rolls, which are currently capped at $750 per transaction and $25,000 per month, from the monthly firm fee cap of $100,000).

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66003; File Nos. SR–NYSE–2011–55; SR–NYSEAmex–2011–84]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Changes Adopting New NYSE Rule 107C To Establish a Retail Liquidity Program on a Pilot Basis To Attract Additional Retail Order Flow to the Exchange for NYSE-listed Securities and New NYSE Amex Equities Rule 107C To Establish a Retail Liquidity Program on a Pilot Basis To Attract Additional Retail Order Flow to the Exchange for NYSE Amex Equities Traded Securities

December 19, 2011.

On October 19, 2011, New York Stock Exchange LLC (''NYSE'') and NYSE Amex LLC (''NYSE Amex'') (collectively the ''Exchanges'') 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

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] proposed rule changes to adopt a pilot program intended to attract additional retail order flow to the Exchanges while also providing the potential for price improvement to such order flow. The proposed rule changes were published for comment in the **Federal Register** on November 9, 2011.[3] To date, the Commission has received 27 comments on the NYSE proposal[4] and 4 comments on the NYSE Amex proposal.[5]

Section 19(b)(2) of the Act[6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for these filings is December 24, 2011.

The Commission is extending the 45-day time period for Commission action on the proposed rule changes. The Commission finds that it is appropriate to designate a longer period to take action on the proposed rule changes so that it has sufficient time to consider the Exchanges' proposals, which would allow the Exchanges to utilize non-displayed orders that offered price improvement to retail order flow potentially in sub-penny increments, and the comment letters that have been submitted in connection with them.

Accordingly, pursuant to Section 19(b)(2) of the Act,[7] the Commission designated February 7, 2012 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule changes.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32879 Filed 12–22–11; 8:45 am]

BILLING CODE 8011–01–P

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 65671 (November 2, 2011), 76 FR 69774; 65672 (November 2, 2011), 76 FR 69788.

[4] *See* Letters to the Commission from Sal Arnuk, Joe Saluzzi and Paul Zajac, Themis Trading LLC, dated October 17, 2011; Garret Cook, dated November 4, 2011; James Johannes, dated November 27, 2011; Ken Voorhies, dated November 28, 2011; William Wuepper, dated November 28, 2011; A. Joseph, dated November 28, 2011; Leonard Amoruso, General Counsel, Knight Capital, Inc., dated November 28, 2011; Kevin Basic, dated November 28, 2011, J. Fournier, dated November 28, 2011; Ullrich Fischer, CTO, PairCo, dated November 28, 2011; James Angel, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated November 28, 2011; Jordan Wollin, dated November 29, 2011; Aaron Schafter, President, Great Mountain Capital Management LLC, dated November 29, 2011; Wayne Koch, Trader, Bright Trading, dated November 29, 2011; Kurt Schact, CFA, Managing Director, and James Allen, CFA, Head, Capital Markets Policy, CFA Institute, dated November 30, 2011; David Green, Bright Trading, dated November 30, 2011; Robert Bright, Chief Executive Officer, and Dennis Dick, CFA, Market Structure Consultant, Bright Trading LLC, dated November 30, 2011; Bodil Jelsness, dated November 30, 2011; Christopher Nagy, Managing Director, Order Routing and Market Data Strategy, TD Ameritrade, dated November 30, 2011; Laura Kenney, dated November 30, 2011; Suhas Daftuar, Hudson River Trading LLC, dated November 30, 2011; Bosier Parsons, Bright Trading LLC, dated November 30, 2011; Mike Stewart, Head of Global Equities, UBS, dated November 30, 2011; Dr. Larry Paden, Bright Trading, dated December 1, 2011; Thomas Dercks, dated December 1, 2011; Eric Swanson, Secretary, BATS Global Markets, Inc., dated December 6, 2011; and Ann Vlcek, Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 7, 2011.

[5] *See* Letters to the Commission from Leonard Amoruso, General Counsel, Knight Capital, Inc., dated November 28, 2011; Kurt Schact, CFA, Managing Director, and James Allen, CFA, Head, Capital Markets Policy, CFA Institute, dated November 30, 2011; Christopher Nagy, Managing Director, Order Routing and Market Data Strategy, TD Ameritrade, dated November 30, 2011; and Shannon Jennewein, dated November 30, 2011.

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12895 and #12896]

Iowa Disaster Number IA–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1998–DR), dated 10/18/2011.

Incident: Flooding.

Incident Period: 05/25/2011 through 08/01/2011.

Effective Date: 12/19/2011.

Physical Loan Application Deadline Date: 01/03/2012.

EIDL Loan Application Deadline Date: 07/18/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Iowa, dated 10/18/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/03/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator or Disaster Assistance.

[FR Doc. 2011–32948 Filed 12–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12967 and #12968]

California Disaster #CA–00182

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 12/19/2011.

Incident: Los Angeles High Winds.

Incident Period: 11/30/2011 through 12/04/2011.

Effective Date: 12/19/2011.

Physical Loan Application Deadline Date: 02/17/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 09/19/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Los Angeles.

Contiguous Counties:

California: Kern, Orange, San Bernardino, Ventura.

The Interest Rates are:

	Percent
For Physical Damage:	

	Percent
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12967 B and for economic injury is 12968 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 19, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–32952 Filed 12–22–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Meeting: RTCA Special Committee 219: Attitude and Heading Reference Systems (AHRS)

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

ACTION: Notice of RTCA Special Committee 219: Attitude and Heading Reference Systems (AHRS).

SUMMARY: The FAA is issuing this notice to advise the public of the eighth meeting of RTCA Special Committee 219: Attitude and Heading Reference Systems (AHRS).

DATES: The meeting will be held January 24–26, 2012, from 9 a.m. to 5 p.m.

ADDRESS: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.), notice is hereby given for a meeting of RTCA Special Committee 219: Attitude and Heading Reference Systems (AHRS). The agenda will include the following:

January 24, 2012

- Introduction and administrative items
- Review of meeting agenda
- Review and approval of Summary from the last plenary meeting, RTCA Paper No. 123–11/SC219–012060–11/SC219–010
- Review minutes from last working group meeting
- Review the combined comment matrix
- Begin discussing and addressing the comment matrix, making changes to the document as needed

January 25, 2012

- Continue discussing and addressing the comment matrix, making changes to the document as needed
- Consider and approve MOPS document as complete, contingent upon making the last changes documented in the comment matrix
- TOR compliance determination Recommend PMC Consideration/Approval of MOPS
- Other Business
- Concluding Remarks
- Adjourn

January 26, 2012

- Open if needed

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 15, 2011.

Robert L. Bostiga,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2011–32855 Filed 12–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Montana

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, the Russell Street/South 3rd Street Project, located in the city of Missoula, Missoula County, Montana. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 20, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Brian Hasselbach, Right of Way and Environmental Programs Manager, Federal Highway Administration—Montana Division, 585 Shepard Way, Helena, MT 59601. Office hours are 7:30 a.m. to 4:30 p.m. (Mountain Standard Time), (406) 441–3908, *Brian.Hasselbach@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions by issuing a Record of Decision (ROD) for the Russell Street/South 3rd Street Project. The purpose of the project is to address current and projected safety and mobility concerns. The project is located in the city of Missoula, Missoula County, Montana.

The actions by FHWA on this project, and the laws under which such actions were taken, are described in the July 2011 Final Environmental Impact Statement (FEIS); the October 2011 ROD; and in other documents in the FHWA's administrative record for the project. The FEIS, ROD, and other documents in the FHWA administrative record are available by contacting FHWA.

The FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.ci.missoula.mt.us/index.aspx?NID=955.* This notice applies to all Federal agency decisions on the project, as of the issuance date of this notice, and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].

7. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund [16 U.S.C. 4601–4604]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [PL 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 13, 2011.

Brian D. Hasselbach,

Right of Way and Environmental Programs Manager, Federal Highway Administration, Montana Division.

[FR Doc. 2011–32893 Filed 12–22–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 290 (Sub-No. 5) (2012–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 2012 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2012 RCAF (Unadjusted) is 1.169. The first quarter 2012 RCAF (Adjusted) is 0.514. The first quarter 2012 RCAF–5 is 0.488. The Board noted an error in the fourth quarter 2011 Labor index, which will be accounted for using the second quarter 2012 forecast error calculation.

DATES: *Effective Date:* January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: December 19, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Raina White,

Clearance Clerk.

[FR Doc. 2011–32874 Filed 12–22–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

VASRD Forum—Improving VA's Disability Evaluation Criteria for Neurological Conditions and Convulsive Disorders, Organs of Special Sense, Gynecological Conditions and Disorders of the Breast, and Skin

AGENCY: Department of Veterans Affairs.

ACTION: Notice of meeting.

SUMMARY: The Veterans Benefits Administration (VBA) and Veterans Health Administration (VHA) will co-host the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD) Forum—Improving VA's Disability Evaluation Criteria for the Neurological Conditions and Convulsive Disorders, Organs of Special Sense, Gynecological Conditions and Disorders of the Breast, and Skin. The purpose of this VASRD Improvement Forum is to capture public comment and current medical science information from presentations made by subject matter experts. This Forum is scheduled for January 17–26, 2012. VA plans to use this information to update the sections of VASRD that pertain to the following four body systems: (1) Neurological Conditions and Convulsive Disorders (38 CFR 4.120–4.124a), (2) Organs of Special Sense (38 CFR 4.75–4.79), (3) Gynecological Conditions and Disorders of the Breast (38 CFR 4.116), and (4) The Skin (38 CFR 4.118). Specifically, diagnostic code descriptors and evaluation criteria will be discussed.

DATES: The plenary session on Tuesday, January 17, 2012, from 8 a.m.–4:30 p.m., will cover neurological conditions and convulsive disorders. The plenary session on Thursday, January 19, 2012, from 8 a.m.–4:30 p.m., will cover organs of special sense with emphasis on the eyes. The plenary session on the morning of Tuesday, January 24, 2012, from 8 a.m.–12 p.m., will cover gynecological conditions and disorders of the breast. The plenary session on Wednesday, January 25, 2012, from 8 a.m.–4:30 p.m., will cover skin conditions.

The Neurology Work Group meeting will take place from 9 a.m.–4:30 p.m.,

on Wednesday, January 18, 2012. The Opthomamology Work Group will meet from 9 a.m.–4:30 p.m. on Friday, January 20, 2012. The Gynecology Work Group will meet from 1 p.m.–4:30 p.m. on Tuesday, January 24, 2012. On Thursday, January 26, 2012, the Skin Conditions Work Group will meet from 9 a.m.–4:30 p.m.

ADDRESSES: All plenary sessions will be held at the VHA New York Harbor Healthcare System, Manhattan Campus, located at 423 East 23rd Street, New York, NY 10010. The Gynecology Work Group will also meet at the Manhattan Campus. The Neurology, Opthomamology and Skin Conditions Work Groups' meetings will occur at the VBA New York Regional Office located at 245 West Houston Street, New York, NY 10014.

Public Comment: Contingent upon available capacity and time, individuals wishing to make oral statements or ask questions will be accommodated on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Nick Olmos-Lau, M.D., Regulation Staff, Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Anyone wishing to attend these meetings or seeking additional information may also contact Dr. Olmos-Lau at (202) 461–9695 or *Nick.Olmos-Lau@va.gov.*

Dated: December 16, 2011.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2011–32892 Filed 12–22–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Friday,

No. 247 December 23, 2011

Part II

Environmental Protection Agency

40 CFR Parts 60 and 241

Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Proposed Amendments; Non-Hazardous Secondary Materials That Are Solid Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 241

[EPA–HQ–OAR–2003–0119 and EPA–HQ–RCRA 2008–0329; FRL–9503–7]

RIN 2060–AR15 and 2050–AG44

Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Proposed Amendments; Non-Hazardous Secondary Materials That Are Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules; Reconsideration of final rule.

SUMMARY: On March 21, 2011, the EPA promulgated its final response to the 2001 voluntary remand of the December 1, 2000, new source performance standards and emission guidelines for commercial and industrial solid waste incineration units and the vacatur and remand of several definitions by the District of Columbia Circuit Court of Appeals in 2007. Following that action, the Administrator received petition[s] for reconsideration as well as identified some issues that warrant further opportunity for public comment. In response to the petition[s], the EPA is reconsidering and requesting comment on several provisions of the final new source performance standards and emission guidelines for commercial and industrial solid waste incineration units.

In addition, the EPA is proposing amendments to the regulations which were codified by the Non-Hazardous Secondary Materials rule. Originally promulgated on March 21, 2011, the Non-Hazardous Secondary Materials rule provides the standards and procedures for identifying whether Non-Hazardous Secondary Materials are solid waste under the Resource Conservation and Recovery Act when used as fuels or ingredients in combustion units. The purpose of these proposed amendments is to clarify several provisions in order to implement the Non-Hazardous Secondary Materials rule as the Agency originally intended.

DATES: Comments must be received on or before February 21, 2012.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by January 3, 2012, a public hearing will be held on January 9, 2012. For further information on the public hearing and requests to speak, contact Ms. Janet Eck at (919) 541–7946 to verify that a hearing will be held.

ADDRESSES: Submit your comments on the commercial and industrial solid waste incineration reconsideration and proposed rule, identified by Docket ID No. EPA–HQ–OAR–2003–0119, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2003–0119.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2003–0119.
- *Mail:* EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2003–0119. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* In person or by Courier, deliver comments to: EPA Docket Center (EPA/DC), Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. Such deliveries are accepted only during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Submit your comments on the Non-Hazardous Secondary Materials proposed rule, identified by Docket ID No. EPA–HQ–RCRA–2008–0329, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Comments may be sent by electronic mail (email) to: *rcra-docket@epa.gov*, Attention Docket ID No. EPA–HQ–RCRA–2008–0329.
- *Fax:* Comments may be faxed to (202) 566–9744, Attention Docket ID No. EPA–HQ–RCRA–2008–0329.
- *Mail:* Send comments to: RCRA Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2008–0329. Please include a total of two copies of your comments. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* Deliver two copies of your comments to: Environmental Protection Agency, EPA Docket Center, Room 3334, 1301 Constitution Avenue NW., Washington DC, Attention Docket ID No. EPA–HQ–RCRA–2008–0329. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments on the commercial and industrial solid waste incineration reconsideration and proposal to Docket ID No. EPA–HQ–OAR–2003–0119. Direct your comments on the Non-Hazardous Secondary Materials proposed rule to Docket ID No. EPA–HQ–RCRA–2008–0329. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information or other information whose disclosure is restricted by statute. Do not submit information that you consider to be confidential business information or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public

Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information regarding the commercial and industrial solid waste incineration reconsideration and proposed rule, contact Ms. Toni Jones, Fuels and Incineration Group, Sector Policies and Programs Division (E143–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0316; fax number: (919) 541–3470; email address: *jones.toni@epa.gov*.

For further information regarding the Non-Hazardous Secondary Materials proposed rule, contact Mr. George Faison, Program Implementation and Information Division, Office of Resource Conservation and Recovery, 5303P, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002; telephone number: (703) 305–7652; fax number: (703) 308–0509; email address: *faison.george@epa.gov*.

SUPPLEMENTARY INFORMATION: *Acronyms and Abbreviations.* The following acronyms and abbreviations are used in this document.

7–PAH 7 Polyaromatic Hydrocarbons
16–PAH 16 Polyaromatic Hydrocarbons
ACI Activated Carbon Injection
ANPRM Advanced Notice of Proposed Rulemaking
ANSI American National Standards Institute
APA Administrative Procedure Act
ARIPPA Anthracite Region Independent Power Producers Association
ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials
ATCM Air Toxic Control Measure
BAT Best Available Technology
Btu British Thermal Unit
CAA Clean Air Act
CARB California Air Resources Board
CBI Confidential Business Information
CBO Carbon burn-out
Cd Cadmium
CDX Central Data Exchange
CEMS Continuous Emissions Monitoring Systems
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act
CFR Code of Federal Regulations
CISWI Commercial and Industrial Solid Waste Incineration
CO Carbon Monoxide
CO_2 Carbon Dioxide
Catalyst Carbon Monoxide Oxidation Catalyst
Cl_2 Chlorine Gas
The Court U.S. Court of Appeals for the District of Columbia Circuit
CSA Canadian Standards Association
CWA Clean Water Act
D/F Dioxin/Furan
DIFF Dry Sorbent Injection Fabric Filter
dscf Dry Standard Cubic Foot
dscm Dry Standard Cubic Meter
DSW Definition of Solid Waste
EG Emission Guidelines
EJ Environmental Justice
EMPC Estimated Maximum Possible Concentration
EOM Extractable Organic Matter
EPA U.S. Environmental Protection Agency
ERT Electronic Reporting Tool
ERU Energy Recovery Unit
ESP Electrostatic Precipitator
FF Fabric Filters
HAP Hazardous Air Pollutants
HCl Hydrogen Chloride
HF Hydrogen Fluoride (HF)
Hg Mercury
HMI Hospital, Medical and Infectious
HMIWI Hospital, Medical and Infectious Waste Incineration
HWC Hazardous Waste Combustor
ICR Information Collection Request
ISO International Standards Organization
LBMS Linkageless Burner Management System
LML Lowest Measured Level
MACT Maximum Achievable Control Technology
MDL Method Detection Level
mg/dscm Milligrams per Dry Standard Cubic Meter
mmBtu/hr Million British Thermal Units per Hour
MSW Municipal Solid Waste
MW Megawatts
MWC Municipal Waste Combustor
NAAQS National Ambient Air Quality Standards
NAICS North American Industrial Classification System
ND Nondetect
NESHAP National Emission Standards for Hazardous Air Pollutants
ng/dscm Nanograms per Dry Standard Cubic Meter
NHSM Non-Hazardous Secondary Material(s)
NO_X Nitrogen Oxides
NSPS New Source Performance Standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
O&M Operations and Maintenance
OMB Office of Management and Budget
OP Office of Policy
OSWI Other Solid Waste Incineration
PAH Polycyclic Aromatic Hydrocarbons
Pb Lead
PCBs Polychlorinated Biphenyls
PCDD Polychlorinated Dibenzodioxins
PCDF Polychlorinated Dibenzofurans
PIC Product of Incomplete Combustion
PM Particulate Matter
POM Polycyclic Organic Matter
ppm Parts Per Million
ppmv Parts Per Million by Volume
ppmvd Parts Per Million by Dry Volume
PRA Paper Reduction Act
PS Performance Specification
QA/QC Quality Assurance/Quality Control
RCRA Resource Conservation and Recovery Act
RDL Reported Detection Level
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RIN Regulatory Information Number
RTO Regenerative Thermal Oxidizer
RTR Residual Risk and Technology Review
SBA Small Business Administration
SCR Selective Catalytic Reduction
SARU Sulfuric Acid Regeneration Unit
SNCR Selective Noncatalytic Reduction
SO_2 Sulfur Dioxide
SSI Sewage Sludge Incineration
SSM Startup, Shutdown, and Malfunction
SVOC Semi-Volatile Organic Compound
SWDA Solid Waste Disposal Act
TBtu Tera British Thermal Unit
TEF Total Equivalency Factor
TEQ Toxic Equivalency
TMB Total Mass Basis
TOX Total Organic Halogens
tpy Tons Per Year
TRI Toxics Release Inventory
TSR Thermal Sand Reclamation
TTN Technology Transfer Network
ug/dscm Micrograms per Dry Standard Cubic Meter
UMRA Unfunded Mandates Reform Act
UL Upper Limit
UPL Upper Prediction Limit
U.S.C. United States Code
UTL Upper Tolerance Limit
VCS Voluntary Consensus Standards
VOC Volatile Organic Compound
WWW Worldwide Web

A. Does this document of reconsideration and proposal apply to me?

Categories and entities potentially affected by the proposed action are those that operate CISWI units, and those that generate potentially affected NHSM. The NSPS and (EG), hereinafter referred to as ''standards,'' for CISWI affect the following categories of sources:

Category	NAICS [1] Code	Examples of potentially regulated entities
Any industrial or commercial facility using a solid waste incinerator.	211, 212, 486	Mining, oil and gas exploration operations; pipeline operators.
	221	Utility providers.

Category	NAICS [1] Code	Examples of potentially regulated entities
	321, 322, 337	Manufacturers of wood products; manufacturers of pulp, paper and paperboard; manufacturers of furniture and related products.
	325, 326	Manufacturers of chemicals and allied products; manufacturers of plastics and rubber products.
	327	Manufacturers of cement; nonmetallic mineral product manufacturing.
	333, 336	Manufacturers of machinery; manufacturers of transportation equipment.
	423, 44	Merchant wholesalers, durable goods; retail trade.
Any facility or entity generating a non hazardous secondary material that may be burned for fuel or destruction [2].	111	Crop Production.
	112	Animal Production.
	113	Forestry and Logging.
	115	Support Activities for Agriculture and Forestry.
	211	Oil and Gas Extraction.
	212	Mining (except oil and gas).
	221	Utilities.
	236	Construction of Buildings.
	311	Food Manufacturing.
	312	Beverage and Tobacco Product Manufacturing.
	313	Textile Mills.
	316	Leather and Allied Product Manufacturing.
	321	Wood Product Manufacturing.
	322	Pulp, Paper, and Paper Products.
	324	Petroleum and Coal Products Manufacturing.
	325	Chemical Manufacturing.
	326	Plastics and Rubber Products Manufacturing.
	327	Non-Metallic Mineral Product Manufacturing.
	331	Primary Metal Manufacturing.
	332	Fabricated and Metal Product Manufacturing.
	333	Machinery Manufacturing.
	334	Computer and Electronic Product Manufacturing.
	336	Transportation Equipment Manufacturing.
	337	Furniture and Related Product Manufacturing.
	339	Miscellaneous Manufacturing.
	423	Durable Goods Merchant Wholesalers.
	424	Nondurable Goods Merchant Wholesalers.
	44–45	Retail Trade.
	486	Pipeline Transportation.
	493	Warehousing and Storage.
	511	Publishing Industry (except Internet).
	531	Real Estate.
	541	Professional, Scientific, and Technical Services.
	611	Educational Services.
	622	Hospitals.
	623	Nursing and Residential Care Facilities.
	624	Social Assistance.
	713930	Marinas.
	721	Lodging, Restaurant.
	722	Food Services and Drinking Places.
	813	Religious, Grantmaking, Civic, Professional, and Similar Organizations.
	92	Public Administration.

[1] North American Industry Classification System.
[2] May be some overlap with the incinerators.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the proposed action. To determine whether your facility would be affected by the proposed action, you should examine the applicability criteria in 40 CFR 60.2010 of subpart CCCC, 40 CFR 60.2505 of subpart DDDD, and 40 CFR 241. If you have any questions regarding the applicability of the proposed action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments to the EPA?

Submitting CBI. Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov*, or email. For comments on the CISWI reconsideration and proposal, send or deliver information identified as CBI to only the following address: Ms. Toni Jones, c/o OAQPS Document Control Officer (Room C404–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attn: Docket ID No. EPA–HQ–OAR–2003–119.

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the

outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a disk or CD–ROM that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

C. How do I obtain a copy of this document and other related information?

The docket number for the proposed action regarding the CISWI NSPS (40 CFR part 60, subpart CCCC) and EG (40 CFR part 60, subpart DDDD) is Docket ID No. EPA–HQ–OAR–2003–0119.

Worldwide Web

In addition to being available in the docket, an electronic copy of the proposed action is available on the WWW through the TTN Web. Following signature, the EPA posted a copy of the proposed action on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

Organization of this Document. The following outline is provided to aid in locating information in this preamble.

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2. How is the definition of solid waste addressed in the final CISWI rule?
3. What is the relationship between this rule and other combustion rules?
B. Actions We Are Taking
C. Discussion of Issues for Reconsideration
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2. Establishment of Limitations on Fuel Switching Provisions
3. Definitions of Cyclonic Burn Barrels, Burn-off Ovens, Soil Treatment Units, Laboratory Analysis Units, and Space Heaters from CISWI Subcategories
4. Providing an affirmative defense for malfunction events
5. Revisions to the CO Monitoring Requirements
6. Establishing a Full-load Stack Test Requirement for CO Coupled with Continuous Oxygen Monitoring
7. Establishing a Definition of ''Homogeneous Waste''
8. Incorporating Fuel Variability into Emission Limit Calculations
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11. Definitions
12. Allowances for Using Feed Stream Analysis or Other Supplemental Information to Demonstrate Compliance
13. Providing Percent Reduction Alternative Standards
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I. CISWI Reconsideration and Proposal

A. Background Information

1. What is the history of the CISWI standards?

On December 1, 2000, the EPA promulgated NSPS and EG for CISWI units (60 FR 75338), hereinafter referred to as the 2000 CISWI rule. On January 30, 2001, the Sierra Club filed a petition for review in the Court challenging the EPA's final CISWI rule. On August 17, 2001, the EPA granted a Request for Reconsideration, pursuant to CAA section 307(d)(7)(B), submitted on behalf of the National Wildlife Federation and the Louisiana Environmental Action Network, related to the definition of *commercial and industrial solid waste incineration unit* and *commercial or industrial waste* in the EPA's CISWI rulemaking. In granting the petition for reconsideration, the EPA agreed to undertake further notice and comment proceedings related to these definitions. On September 6, 2001, the Court entered an order granting the EPA's motion for a voluntary remand of the CISWI rule, without vacatur. The EPA requested a voluntary remand of the final CISWI rule to address concerns related to the EPA's procedures for establishing MACT floors for CISWI units in light of the Court's decision in *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855 (DC Cir. 2001)(Cement Kiln). Neither the EPA's granting of the petition for reconsideration, nor the Court's order granting a voluntary remand, stayed, vacated or otherwise influenced the effectiveness of the 2000 CISWI rule. Therefore, the remand order

had no impact on the implementation of the 2000 CISWI rule.

On February 17, 2004, the EPA published a proposed rule (CISWI Definitions Rule) soliciting comments on the definitions of ''solid waste,'' ''commercial and industrial waste,'' and ''commercial and industrial solid waste incineration unit''. On September 22, 2005, the EPA published in the **Federal Register** the final rule reflecting our decisions with respect to the CISWI Definitions Rule. The rule was challenged and, on June 8, 2007, the Court vacated and remanded the CISWI Definitions Rule. In vacating the rule, the Court found that CAA section 129 unambiguously includes among the incineration units subject to its standards, any facility that combusts any solid waste material, subject to four statutory exceptions. While the Court vacated the CISWI Definitions Rule, the 2000 CISWI rule remains in effect.

On March 21, 2011, the EPA promulgated revised NSPS and EG for CISWI units (76 FR 15704). That action constitutes the EPA's response to the voluntary remand of the 2000 CISWI rule and to the 2007 vacatur and remand of the CISWI Definitions Rule. In addition, the EPA addressed the 5-year technology review that is required under CAA section 129(a)(5). Following that action, the Administrator received petition[s] for reconsideration as well as identified some issues that warrant further opportunity for public comment. In response to the petition[s], the EPA is reconsidering and requesting comment on several provisions of the final new source performance standards and emission guidelines for commercial and industrial solid waste incineration units.

2. How is the definition of solid waste addressed in the final CISWI rule?

The RCRA definition of solid waste is integral in defining the CISWI source category. The EPA defines the NHSM that are solid waste under RCRA in the final ''Identification of Non-Hazardous Secondary Materials That Are Solid Waste'' Rulemaking. In an action parallel to the March 21, 2011, final CISWI rule, the EPA promulgated a final rule that identifies the standards and procedures for identifying whether NHSM are or are not solid waste when used as fuels or ingredients in combustion units. That action, hereinafter referred to as the ''2011 NHSM final rule,'' is relevant to the final CISWI rule because some ERUs and waste-burning kilns combust, in their combustion units, secondary materials that are solid waste under the 2011 NHSM final rule. Commercial and industrial units that combust solid waste are subject to standards issued pursuant to CAA section 129, rather than to standards issued pursuant to CAA section 112 that would otherwise be applicable to such units (*e.g.,* boilers, process heaters and cement kilns).

3. What is the relationship between this rule and other combustion rules?

These amendments address the combustion of solid waste materials (as defined by the Administrator under RCRA in the concurrent Non-hazardous Solid Waste Definition Rulemaking) in combustion units at commercial and industrial facilities. If an owner or operator of a CISWI unit permanently ceases combusting solid waste, the affected unit would no longer be subject to this regulation under CAA section 129. Section 112 rules of the CAA, applicable to boilers and process heaters at major sources and boilers at area sources, would apply to subject boilers and process heaters that do not combust solid waste. Boilers and process heaters that combust solid waste are subject to CISWI as ERUs. EPA has also finalized revised CAA section 112 NESHAP from the Portland Cement Manufacturing Industry (75 FR 21136, September 9, 2010). Cement kilns combusting solid waste are waste-burning kilns subject to CISWI, not the otherwise applicable NESHAP.

B. Actions We Are Taking

In this notice, we are granting reconsideration of, and requesting comment on, certain issues raised by Petitioners in their petitions for reconsideration and the issues identified by the EPA in the March 21, 2011, notice of reconsideration. These provisions are: (1) Revision of the subcategory of ERUs; (2) establishment of limitations on fuel switching provisions; (3) revision of the definition of cyclonic burn barrels; (4) establishment of the procedures for providing an affirmative defense for malfunction events; (5) revisions to the carbon monoxide monitoring requirements; (6) establishment of a full-load stack test requirement for CO coupled with continuous oxygen monitoring for CISWI units; and (7) establishment of a definition of ''homogeneous waste'' in the CISWI rule. The EPA is also proposing certain revisions, which are: (1) Revised emission limits for the waste-burning kiln and ERU subcategories to reflect updated inventories and additional data, (2) the removal of continuous CO monitoring with CO CEMS requirements, (3) the removal of oxygen correction requirements for CO emission limits for ERUs during periods of startup and shutdown, and (4) the replacement of continuous PM monitoring for ERUs greater than 250 MMBtu/hr design heat input capacity with continuous parameter monitoring system requirements. The EPA is taking comment on those revisions . Additionally, the EPA is proposing amendments and technical corrections to the final rule to clarify questions on final rule language and correct minor typographical errors raised by stakeholders subject to the final rule. Section I.C. of this preamble summarizes these issues and discusses our proposed responses to each issue.

We are also proposing other clarification changes and technical corrections to certain provisions in the final rule.

We are seeking public comment only on the issues specifically identified in this notice. We will not respond to any comments addressing other aspects of the final rule or any other related rulemakings.

C. Discussion of Issues for Reconsideration

This section of the preamble contains the EPA's basis for the provisions we are reconsidering in this proposed rule. We solicit comment on all proposed responses and revisions discussed in the following sections.

1. Revision of the Subcategories

Today's proposal incorporates new emission limits based on revised inventories for two of the final rule subcategories, solid-fuel burning ERUs and waste-burning kilns. Tables 1 and 2 present the proposed emission limits for all subcategories for existing and new sources, respectively.

TABLE 1—COMPARISON OF EXISTING SOURCE MACT FLOOR LIMITS FOR 2000 CISWI RULE AND THE PROPOSED MACT FLOOR LIMITS

Pollutant (units) [a]	Incinerators (2000 CISWI limit)	CISWI Subcategories				
		Incinerators	ERUs—Solids	ERUs—Liquid/Gas	Waste-burning kilns	Small, remote incinerators
HCl (ppmv)	62	29	0.50	[b] 14	3.0 [b]	220
CO (ppmv)	157	[b] 36	490 (biomass units)/46 (coal units).	36	120 (long kilns)/410 (preheater/precalciner).	20
Pb (mg/dscm)	0.04	0.0036	0.0019 (biomass units)/0.0031 (coal units).	0.096	0.0043	2.7
Cd (mg/dscm)	0.004	0.0026	0.00078 (biomass units)/0.058 (coal units).	0.023	0.00082	0.61
Hg (mg/dscm)	0.47	0.0054	0.0020	[b] 0.0031	0.011 [b]	0.0057
PM, filterable (mg/dscm).	70	34	11 (biomass units)/86 (coal units).	110	9.2	230
Dioxin, furans, total (ng/dscm).	(no limit)	4.6	0.52 (biomass units)/0.51 (coal units) [b].	[b] 2.9	3.6	1,200
Dioxin, furans, TEQ (ng/dscm).	0.41	0.13	0.12 (biomass units)/0.075 (coal units) [b].	[b] 0.32	0.075 [b]	57
NO_X (ppmv)	388	53	290 (biomass units)/340 (coal units)	76	630	240
SO_2 (ppmv)	20	11	7.3 (biomass units)/650 (coal units)	720	830	420

[a] All emission limits are expressed as concentrations corrected to 7 percent oxygen.
[b] See the memorandum ''CISWI Emission Limit Calculations for Existing and New Sources for Reconsideration Proposal'' for details on this calculation.

TABLE 2—COMPARISON OF NEW SOURCE MACT FLOOR LIMITS FOR 2000 CISWI RULE AND THE PROPOSED MACT FLOOR LIMITS

Pollutant (units) [a]	Incinerators (2000 limit)	Final CISWI Subcategories				
		Incinerators	ERUs—Solids	ERUs—Liquid/Gas	Waste-burning kilns	Small, remote incinerators
HCl (ppmv)	62	0.091	0.50 [c]	[b] 14	3.0 [b]	200
CO (ppmv)	157	12	160 (biomass units)/46 (coal units).	36	90 (long kilns)/320 (preheater/precalciner).	12
Pb (mg/dscm)	0.04	[b] 0.0019	0.0019 (biomass units)/0.0031 (coal units) [c].	0.096	0.0043 [c]	0.26
Cd (mg/dscm)	0.004	0.0023	0.00014 (biomass units)/0.058 (coal units).	0.023	0.00082 [c]	[c] 0.61
Hg (mg/dscm)	0.47	[b] 0.00084	0.0020 [c]	[d] 0.00091	0.0037 [b]	[b] 0.0035
PM, filterable (mg/dscm).	70	18	5.1 (biomass units)/86 (coal units) [c].	110	8.9	[c] 230
Dioxin, furans, total (ng/dscm).	(no limit)	[b] 0.058	0.52 (biomass units)/0.51 (coal units) [b].	(no limit)	0.51 [b]	[c] 1,200
Dioxin, furans, TEQ (ng/dscm).	0.41	0.13	0.076 (biomass units)/0.075 (coal units) [b].	[d] 0.093	0.075 [b]	31
NO_X (ppmv)	388	23	290 [c] (biomass units)/340 (coal units).	76	200 [b]	78
SO_2 (ppmv)	20	[c] 11	7.3 [c] (biomass units)/650 (coal units).	720	130	1.2

[a] All emission limits are measured at 7 percent oxygen.
[b] See the memorandum ''CISWI Emission Limit Calculations for Existing and New Sources for Reconsideration Proposal'' for details on this calculation.
[c] The NSPS limit equals the EG limit. The EG limit was selected as the NSPS limit.
[d] D/F TEQ and Hg limits for ERUs—liquid/gas were replaced with D/F TEQ limits for liquid fuel major source boilers. See ''CISWI Emission Limit Calculations for Existing and New Sources for Reconsideration Proposal'' for details.
[e] Hg limit was developed using material input data from CISWI kilns identified within the Portland Cement NESHAP database. See the memorandum ''CISWI Emission Limit Calculations for Existing and New Sources for Reconsideration Proposal'' for details on this calculation.

a. Energy Recovery Units

In the final rule, we established separate subcategories based on the types of fuels and wastes ERUs were designed to burn. Energy Recovery Units (*i.e.,* units that would be boilers and process heaters but that they combust solid waste) designed to burn gaseous fuels and liquids that are solid waste were included in one primary subcategory, and the other primary subcategory was for units designed to

burn solid fuels or predominantly non-coal solid materials. The solid fuel ERU subcategory was further divided into separate subcategories for coal and biomass units, with separate limits for CO, NO_X and SO_2 to account for significant differences in unit design for these two types of fuels and the impacts the different unit designs have on emissions of these pollutants.

Petitioners have contended that they did not have adequate opportunity to comment on the ERU subcategories presented in the final rule. Some have suggested that all nine emission limits should be divided between coal and biomass ERUs, instead of only having different limits for CO, NO_X and SO_2. We are granting reconsideration of our subcategorization approach for ERUs and are also proposing to divide emission limits for PM, Cd, Pb and D/F between coal and biomass units. The generation of PM is affected by the combustor design and operation. Therefore, design differences between biomass and coal ERU units have an impact on the generation of PM. We also are separating Cd and Pb with PM primarily due to the observation that these metals typically precipitate onto PM and are controlled along with PM. Finally, while D/F formation depends to some extent on the amount of chlorine available in the combustion gases, it is also affected by the amount of time the chlorine and hydrocarbon materials remain within a particular temperature range. The time gases remain in this range is a function of the combustor design, therefore, we have proposed separate limits for D/F as well. We are taking comment on the proposed revisions to the subcategorization of ERUs, including whether we should also subcategorize for HCl and Hg.

Since issuing the final CISWI rule, we have received data and information in both petitions and data submittals that indicated our inventory of ERUs used to develop the final rule standards required some adjustments to more accurately reflect the definition of solid waste in the 2011 NHSM final rule. Based on the new data, we removed five units from the final rule inventory that we determined to be non-waste burning units, and we added three units to our inventory that we determined combust solid waste. We also received emissions data for the newly added units and re-analyzed the performance of ERUs in the solid-biomass and solid-coal ERU subcategories. The emission limits in today's proposal reflect the new inventory and emission data received; however, we have used the same methodology as in the final rule for establishing emission limits. We are not taking comment on this methodology.

b. Waste-Burning Kilns

The EPA has performed an analysis of the materials being combusted in the entire inventory of Portland cement kilns in light of the final NHSM rule (See memorandum ''Revised Floors without Kilns that Would have been CISWI Kilns Had the Solid Waste Definition Applied'' in the CISWI docket). As a result of this analysis, we have added 11 more kilns to our inventory of waste-burning kilns. We have also obtained emissions test data for the newly identified CISWI kilns and re-calculated the MACT floor emission limits for the waste-burning kilns subcategory based on the new inventory and additional data.

We determined that in the case of CO emissions, it is appropriate to subcategorize by kiln type. In this case we are subcategorizing into two kiln types, long kilns (which include both dry and wet process kilns) and kilns that have preheaters (with or without precalciners. A review of the available data for CO emissions for CISWI kilns indicates that there are significant differences between CO emissions for these two types of kilns. The CO emissions from the three long kilns were all below 100 ppmv. CO emissions from the three preheater kilns were all above 300 ppmv. We note that the CO emission factors for long kilns are at least a factor of 5 less than those for preheater or preheater precalciner kilns. We attribute this difference to the presence of the preheater, which results in a different temperature profile than exists in the cold end section of a long kiln.

As with the new ERU standards, we have used the same methodology to establish today's proposed emission limits as we used for the final rule; therefore, we are not accepting comment on the methodology used to calculate the limits. We are also requesting comment on whether waste-burning kiln emission limits should be expressed on a production (*e.g.,* lb per million tons clinker produced) basis instead of, or in addition to, concentration based limits. Table 3 presents the emission limits for PM, NO_X, SO_2 and Hg on a production basis for comparison. Comments should clarify which pollutants could warrant production-based limits and the rationale for using a production basis.

TABLE 3—WASTE-BURNING KILN EMISSION LIMITS EXPRESSED IN PRODUCTION BASIS

Pollutant (units)	Existing kilns	New kilns
Hg (lb/MM ton clinker)	58	21
PM (lb/ton clinker)	0.052	0.050
NO_X (lb/ton clinker)	6.7	2.1
SO_2 (lb/ton clinker)	12.3	1.9

2. Establishment of Limitations on Fuel Switching Provisions

The final rule included provisions to address the situation where CISWI units cease combusting solid waste, and where existing commercial and industrial facilities start combusting solid waste. Units that cease combusting solid waste remain subject to CISWI for at least 6 months after solid waste is added to the combustion chamber. After 6 months, sources must either comply with any applicable section 112 standards or, if they intend to combust solid waste in the unit in the future, opt to remain subject to CISWI. Sources switching out of CISWI due to cessation of solid waste combustion must submit advance notification of the effective date of the waste-to-non-waste fuel switch consistent with new procedures in the final rule. Units that begin combusting solid waste are considered affected sources under CISWI EG, and must comply as expeditiously as possible as required by the state or federal CISWI 111(d)/129 plan revision, whichever is applicable.

The EPA acknowledges that sources may stop and start combusting solid waste in their combustion units, and that regulatory procedures are necessary to guide sources through the changes in applicability that may result due to a switch in combustion materials. The provisions in the final rule account for the fact that facilities may start and stop combusting solid waste and ensure that any resulting changes in applicability

between section 129 and section 112 rules do not occur with so much frequency that sources are unable to demonstrate continuing compliance with the applicable standards. To ensure that frequent switching does not impede our ability to determine continuous compliance and create undue permitting and testing burdens, sources remain subject to CISWI for a minimum of 6 months. The definition of CISWI unit has been revised to clarify that a CISWI unit includes a distinct operating unit of any commercial or industrial facility that combusts any solid waste in a consecutive 6-month period. We believe this change will reduce administrative and compliance costs to both the source and the regulatory agencies. For example, sources will not have to re-establish initial compliance with CISWI or revise their operating permit to reflect a switch out of and back into the CISWI regulations. Instead, facilities that combust solid waste would continue to be subject to the CISWI regulations for the 6-month period after waste is added to the combustion unit. For example, if a source burns waste on January 1, they would be subject to CISWI through June 30. If during that 6-month period they burned waste again, for example on March 1, the 6-month window would now be until September 30. The regulations also allow facilities to remain subject to CISWI beyond 6 months after cessation of solid waste combustion, at their own discretion, if the source determines that continued compliance with CISWI is appropriate because the source intends to combust solid waste in the future. Source owners or operators may, alternatively, choose a date at least 6 months after ceasing solid waste combustion on which they would no longer be subject to CISWI, and would instead be subject to any applicable section 112 standards. This date is called the effective date of the waste-to-fuel switch.

Specifically, the new provisions direct a source owner or operator to establish an effective date for the waste-to-non-waste fuel, or non-waste fuel-to-waste switch, and that date becomes the date on which all of the newly applicable requirements apply. When a source begins combusting solid waste, the effective date of the non-waste fuel-to-waste switch must be the same as the actual date the unit begins combusting solid waste because by statute any source that combusts any solid waste is a solid waste incineration unit subject to standards under CAA section 129. See section 129(g)(1) (defining ''solid waste incineration unit''). For sources that cease burning solid waste, the effective date for the waste-to-fuel switch is a date that is at least 6 months after the last date on which solid waste is added to the combustion unit. This allows sources that cease combusting solid waste to comply with an applicable NESHAP or opt to remain subject to CISWI at the discretion of the owner or operator. We allow the owner or operator of a CISWI unit the option of remaining subject to CISWI to account for sources that may want to retain the ability to burn waste intermittently without having to periodically switch between the section 112 and section 129 regulatory programs. If a source wishes to end applicability of CISWI to its unit, the source must submit an advance notification of the effective date, established as described above, of the waste-to-non-waste fuel switch. The source must be in compliance on the effective date of the waste-to-non-waste fuel switch with any NESHAP that applies as a result of ceasing the combustion of solid waste. The source must remain in continuous compliance with the CISWI regulations until that date.

The new waste-to-non-waste fuel switch provisions in the final rule include requirements to conduct performance testing that will assure compliance with all applicable standards. Specifically, performance tests must be conducted within 60 days of the date on which the unit begins combusting solid waste. In addition, the owner or operator must collect and report any PM CEMS and/or PM parametric monitoring data for those monitors that are operated at the same time as the performance test to determine whether the existing calibrations and/or correlations are still applicable. After the testing is completed, and it is demonstrated that the source is operating in compliance with the applicable standards, the owner or operator should adjust any PM CEMS calibration and any correlation for PM to correspond to the performance test results and data.

The new provisions also require advance notification of the effective date of the waste-to-non-waste fuel switch. The notification includes basic information that will enable the reviewing authority to determine the date on which CISWI will no longer apply to the facility and the date on which any newly applicable section 112 regulations may apply. Notification must be submitted to both the EPA Regional Office and the delegated state or local agency. To ensure that frequent switching does not impede our ability to determine continuous compliance, sources may not switch between applicable section 129 and section 112 standards without completing the initial performance test. Therefore, sources that wish to start burning solid waste before they have demonstrated compliance with their existing section 112 standard must complete the performance test for the 112 rule before switching to solid waste combustion. If a source switches back to a non-waste fuel or non-waste material for which a performance test was conducted within the 6 months preceding the effective date of the switch, and if there are no changed conditions that would affect emissions, the source need not retest that source until 6 months from the effective date of the switch. If a source is subject to any emission limits for which compliance is determined on an annual average or other averaging period that is for a period of time greater than the period in which the source will be combusting the fuel or non-waste material, the source must comply with the emission limit averaged over the shorter time period in which the fuel or material is combusted. For example, if a source chooses to demonstrate compliance with the Hg limits of the major source Boiler NESHAP through fuel analysis, which has a 12-month rolling average limit, and opts to start combusting solid waste and become subject to CISWI after combusting the fuel under the Boiler NESHAP for only 9 months, the source must demonstrate compliance with the Hg limit based on a 9 month rolling average instead of the annual average. The EPA believes this is necessary to assure that switching to solid waste combustion does not compromise our ability to determine compliance with standards under section 112.

The rules do not allow for compliance extensions associated with changes to the fuels or materials that are combusted. After the first substantive compliance date (*e.g.,* the effective date of the state program or 5 years after publication of the final CISWI rule for incineration units), sources must be in compliance with the standard that is applicable to the source based on the type of unit and the fuels or materials that are combusted. An existing source will not be considered a new source solely due to a combustion material switch. Assuming new source applicability is not triggered, existing sources that change fuels or materials are considered existing sources and, as such, they must be in compliance on the date they begin combusting the new fuel or material. For all sources that commence combustion of solid waste,

the CISWI requirements become applicable on the date that the fuel switch occurs.

While we believe the final rule reflects reasonable approaches consistent with the requirements of the CAA, we believe reconsideration and an additional opportunity for public review and comment are appropriate. Therefore, we are seeking comment on the fuel switching provisions included in the final CISWI rule, particularly on whether the provisions should include further clarification on the timeline and regulatory requirements of a fuel switch. Additionally, we are soliciting comment on an alternative time period for switching frequency (*e.g.,* 12 months).

3. Definitions of Cyclonic Burn Barrels, Burn-off Ovens, Soil Treatment Units, Laboratory Analysis Units, and Space Heaters from CISWI Subcategories

The EPA included in the final rule definitions for units that differentiated such units from the four subcategories for which the Agency finalized standards on March 21, 2011. The definitions were not proposed and the EPA is proposing those definitions in this notice to provide the public an opportunity to comment on them. We discuss each definition below.

In the proposed CISWI rule, the EPA included cyclonic burn barrels within the definition for incinerators. Based on the information received during the comment period, the EPA determined that cyclonic burn barrels and traditional incinerators should be separate subcategories. See 40 CFR 60.2265 and 60.2875 (defining ''cyclonic burn barrel'' to mean a combustion device for waste materials that is attached to a 55 gallon, openhead drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air. A cyclonic burn barrel is not an incinerator, waste-burning kiln, an ERU or a small, remote incinerator under subparts CCCC or DDDD.)

In addition, information we have obtained since proposal indicates that there may be many more cyclonic burn barrels than those we have identified, and we have almost no emission data on which to set emissions standards for cyclonic burn barrels. We also received information that it is difficult, if not impossible, to test cyclonic burn barrels for the CAA section 129 pollutants using available test methods. For these reasons, we concluded in the final rules that cyclonic burn barrels were not incinerators and that we could not establish standards for such units at the time we issued the final rules. We further determined in the final rule that we did not need to regulate cyclonic burn barrels to comply with our CAA section 112(c)(6) obligation for the reasons set forth in the preamble to the final rule. We have not received any new emission data for cyclonic burn barrels; therefore, we are not proposing to establish standards for such units in this notice. We solicit comment concerning our decisions in regard to cyclonic burn barrels and the definition as set forth in the final rule.

We estimated in the proposed CISWI rule that there were approximately 36 burn-off ovens and we proposed standards for the subcategory based on an incomplete emission data set. We received many comments during the comment period that indicated that there may be 15,000 more units in the burn-off oven subcategory than we had identified, and the comments also indicated that the subcategory for which we established one set of standards in fact has many different types of units that should not be regulated under one standard. Based on the comments, the lack of data, and our determination that we did not need to regulate burn-off ovens to comply with our CAA section 112(c)(6) obligation, we did not finalize standards for burn-off ovens. We revised the definition of burn-off oven in the final rule to distinguish such units from the units for which we established standards. We have not received data that would allow us to establish standards for the various burn-off oven subcategories and, therefore, we are not proposing standards in this reconsideration notice. We solicit comment on our decisions concerning to burn-off ovens and on our definition as set forth in the final rule.

The EPA believed there were two soil treatment units prior to proposing the CISWI standards and we proposed to include soil treatment units in the waste-burning kilns subcategory. Commenters indicated that soil treatment units are not kilns and also that the Agency had significantly underestimated the number of such units currently in operation. Based on the comments and our determination that we did not need such units to comply with our CAA section 112(c)(6) obligation, we did not finalize standards for soil treatment units. We included a definition for soil treatment unit in the final rule to distinguish such units from the units for which we established standards. We have not received additional data since issuing the final standards that would allow us to adequately characterize the soil treatment unit subcategory and we are not proposing standards for such units in this reconsideration notice. We solicit comment concerning our decisions in regard to soil treatment units and our definition as set forth in the final rule.

The EPA received many comments concerning laboratory analysis units during the comment period on the proposed rule. The EPA concluded based on those comments that samples used in laboratory analysis units have a purpose separate from the disposal of material. Furthermore, we believe based on the information available that the material that is combusted in such units is likely not a solid waste as that term is defined in the 2011 NHSM final rule. For these reasons and because we determined we do not need such units to comply with our CAA 112(c)(6) obligation, we included in the final rule a definition of laboratory analysis unit that distinguishes such units from the units for which we established standards. We have not received any information since issuing the final rule on the emissions from laboratory analysis units or the nature of the material combusted in such units that causes us to revise the conclusions reached in the final rule. We solicit comment concerning our decisions in regard to laboratory analysis units and our definition as set forth in the final rule.

The EPA did not consider space heaters in the proposed rule. The Agency received comments inquiring whether such units were subject to the proposed standards if they combusted solid waste. Because the EPA did not consider such units when proposing the CISWI standards and we did not have emissions data for space heaters, we included in the final rule a definition of space heaters that was intended to distinguish such units from the units for which the Agency finalized standards. As with the other units discussed in this section, the EPA does not have to regulate space heaters to comply with the CAA 112(c)(6) obligation. We have not received any emissions information on space heaters since issuing the final CISWI standards; therefore, we are not proposing to regulate such units in the reconsideration notice. We have, however, identified typographical errors included in the definition of space heater contained in the final CISWI standards and we are proposing a definition that corrects those typographical errors: ''Space heater means a usually portable appliance for heating a relatively small area. A space heater is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.'' We solicit comment our

decisions in regard to space heaters and our revised definition set forth above.

4. Providing an affirmative defense for malfunction events

The EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause an exceedance of the relevant emission standard. (See, *e.g.,* State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (Sept. 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions (Feb. 15, 1983)). The EPA therefore added to the final rule an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions. See 40 CFR 60.2265 and 60.2875 (defining ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.). We also added other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 60.2120 and 60.2685. See 40 CFR 22.24. The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 60.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and/or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions ''[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner. * * *'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with section § 60.11(d) and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when the applicable emission limitations were being exceeded.* * *'' and that ''[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with section 113 of the CAA. See also 40 CFR 22.77.

While we believe the final rule reflects reasonable approaches consistent with the requirements of the CAA, we believe reconsideration and additional opportunity for public review and comment should be obtained. We are therefore seeking comment on the inclusion of the affirmative defense provisions in the final rule.

5. Revisions to the CO Monitoring Requirements

In the March 21, 2011, notice of reconsideration, the EPA initiated reconsideration of the requirements to continuously monitor for CO. Petitioners have identified computational issues for correcting CO concentration measurements to 7 percent oxygen for periods when the oxygen content of the flue gas approaches the ambient air oxygen content. The equation for the 7 percent oxygen correction is X ppm CO*(20.9 − 7)/(20.9 − %O2 of flue gas stream). As seen by this equation, as the flue gas stream oxygen content gets closer to 20.9, the value of X is multiplied by an ever increasing factor. For example, when the stack gas oxygen content is 4 percent, the factor is 0.82. If the stack gas oxygen content is 20 percent, the factor increases to 15.4. Therefore, a flue gas CO concentration reading of 100 ppm would be corrected to 82 ppm for a stack gas at 4 percent oxygen content, but would become a 1,540 ppm corrected concentration for a stack gas at 20 percent oxygen content. In the extreme, at a 20.8 percent stack gas concentration (*i.e.,* approximating ambient air oxygen content), the same 100 ppm measurement would be corrected to 13,700 ppm.

Petitioners have noted that oxygen contents relatively close to ambient air are often maintained during combustion unit startup and shutdown in order to safely operate the combustion unit. Therefore, CO readings during these periods would be multiplied by an uncharacteristically high correction factor, and the resulting corrected CO concentrations are artificially inflated due to the 7 percent oxygen correction. Petitioners and commenters argue and presented data that show these artificially inflated data points drive the 30-day rolling average values for the unit beyond the emission limit.

Petitioners have suggested various approaches to remedy this situation, with one being to simply waive the 7 percent oxygen correction requirement during unit startup and shutdowns. In other words, the CEMS data as reported at stack gas concentration would be included in the rolling average calculations for periods when the combustion unit is either being started up or shutdown. During all other operating periods, the CEMS data are corrected to a 7 percent oxygen concentration prior to calculating the rolling average.

We received data for one unit in one subcategory (coal ERUs) that indicates startups usually occur over a 4 hour period, and shutdowns occur over a 1 hour period. Therefore, we are proposing provisions for calculating the 30-day CO rolling average that allow the uncorrected CEMS reading to be used during the first 4 hours of operation from a cold start and the 1 hour of operation following the last waste material being fed to the combustion unit during shutdown procedures of the unit. Sources must indicate in the CEMS data records which CEMS data are obtained during the 4 hour startup and 1 hour shutdown period.

Additionally, in order to be consistent with similar requirements for non-waste fuel-fired boilers and process heaters, we are proposing to remove continuous CO monitoring requirements for new and existing ERU units, instead making CO monitoring with CEMS a compliance alternative and, for larger units, requiring annual CO stack tests and continuous oxygen monitoring instead. We have also removed the continuous CO monitoring requirements for new CISWI units in the other subcategories, but allow them to demonstrate compliance using CO CEMS if they so choose. The 7 percent oxygen correction waiver during startup and shutdowns discussed above would apply to any CISWI sources that elect to demonstrate compliance with the CO limits with a CO CEMS instead of performing stack tests. We are requesting comment on these proposed revisions to the final rule CO monitoring requirements.

6. Establishing a Full-load Stack Test Requirement for CO Coupled with Continuous Oxygen Monitoring

In the March 21, 2011, notice of reconsideration, the EPA initiated reconsideration on the requirement of coupling a full-load stack test for CO coupled with continuous oxygen monitoring to demonstrate continuous compliance with the CO emission limits. While this requirement pertains

primarily to requirements contained within the major source boiler NESHAP, there are similar requirements in the final CISWI rule for existing units. Specifically, existing ERUs with a design heat input capacity over 100 MMBtu/hr must demonstrate continuous compliance with the CO emission limits with an annual CO stack test and monitoring the oxygen content of the flue gas using a continuous oxygen monitoring system.

As discussed earlier, we have removed the CO CEMS requirements for existing units, instead allowing the option for sources to use CO CEMS to demonstrate compliance with the standards. We are also requesting comment on whether allowing the option to use CO CEMS instead of oxygen monitoring is of potential use to affected sources and implementing agencies, and also whether the oxygen monitoring requirements coupled with an annual CO stack provides an appropriate parameter to ensure optimized combustion short of direct CO measurements.

Petitioners have also commented that the final rule continuous oxygen monitoring requirements would preclude the use of existing oxygen monitoring systems that may already be installed on these units to help manage combustor operation. Petitioners have claimed that, by requiring the system meet Performance Specification 3 requirements, it is unlikely that existing oxygen monitors are located in a position that would enable their use for compliance demonstration. As a result, sources would need to install and operate an additional oxygen monitoring system. Petitioners contend that this additional system would be an added expense and would be located too far downstream of the combustion chamber to provide accurate data regarding combustion characteristics so would be of no use to combustor operation.

We are therefore proposing revisions to the continuous oxygen monitoring provisions in today's action that would afford the ability for existing sources to use their current oxygen analyzer and oxygen trim systems to demonstrate continuous compliance. We are requesting comment on the practicality of the proposed provisions, and whether alternative monitoring approaches are available that would ensure that the oxygen monitoring system is sited and operated to give accurate readings while minimizing the need for potentially duplicative monitoring systems.

7. Establishing a Definition of ''Homogeneous Waste''

The EPA included in the final CISWI rule a definition of homogenous waste and a process for evaluating claims that a particular waste stream is homogenous.

Homogeneous wastes are stable, consistent in formulation, have known fuel properties, have a defined origin, have predictable chemical and physical attributes, and result in consistent combustion characteristics and have a consistent emissions profile. Qualifying small power production and cogeneration facilities requesting an exemption from CISWI on the basis that they burn homogeneous waste may be asked to demonstrate, using defined test methods acceptable to the EPA, that the physical and chemical characteristics of the waste are consistent throughout such that the emission profile of any sample of waste combusted is similar or identical to any other sample. Mixtures of different types of wastes are generally not homogeneous, unless the mixtures are from materials that are each individually determined to be homogeneous, are from known origin, are mixed in constant proportion, and are conditioned or processed, such as could occur in the gasification of the wastes. MSW can never be homogeneous because it does not have a defined origin. Likewise, refuse derived fuel cannot be homogeneous because it is derived from MSW. Refuse derived fuel is also specifically excluded from the qualifying small power production and cogeneration facilities exemption at CAA section 129(g)(1).

In the final rule, the EPA stated that a determination concerning whether a waste is homogeneous is made on a case-by-case basis. The EPA added provisions to the CISWI final rule that require source owners or operators seeking the exemption to submit a request for a homogeneous waste fuel determination to the EPA, and that they support their request with information describing the materials to be combusted and why they believe the waste is homogeneous. The final rule also indicated that the determination of what constitutes a homogeneous waste is not delegable to the state or local agencies.

We are proposing the definition of homogeneous waste and the provisions for making homogenous waste determinations to provide the public an opportunity to comment on the provision.

8. Incorporating Fuel Variability Into Emission Limit Calculations

The proposed and final CISWI rule emission limits were calculated based primarily on emissions test data. Commenters urged the EPA to incorporate fuel variability into the emission limit calculations as was done in the boiler NESHAP. Petitioners have since claimed that the EPA did not adequately address comments regarding this issue. In today's proposal, we are providing further clarification on our response to this issue.

In the preamble to the final CISWI rule, we explained the methodology used to establish the final emission limits, which relied almost exclusively on direct measurements. Commercial and Industrial Solid Waste Incineration units by definition are burning wastes, usually in combination with various non-waste fuels, and often with a variety of different waste streams. As a result, fuel variability data would only account for a variability found in a fraction of the materials being input into the unit. We have, in fact, considered total material feed variability in establishing limits for Hg for waste-burning kilns (76 FR 15727). To enable this analysis, we had to rely on data available from sources that provided materials analysis for all materials being fed into Portland cement kilns over a 30-day span. We did not, and do not still, have such data available for other pollutants and other types of CISWI units. Therefore, we are not proposing the use of fuel variability in our emission limit methodology, except as noted above. We are requesting comments and supporting data that would allow us to consider an approach similar to the waste-burning kiln Hg limits for other pollutants and subcategories.

9. Review of D/F Data and Non-Detect Methodology Using Three Times the Detection Level

Several petitioners have argued that the D/F emission limits are based primarily on emissions data that are below detection levels and have suggested that these data not be included in emissions calculations, or at a minimum, establish a minimum emission limit value that is quantifiable by most laboratories available to analyze this data. We proposed and, in the final rule, used a methodology that sets the emission limit at a level that is at least three times the detection limit of the emission tests of the best performing units used in the MACT floor emission limit calculations. We have, however, reviewed the D/F data in more detail to

ensure that all data are correctly identified as either non-detection or detection level limited, where some of the fractions may be non-detection, but not all of them. While our findings found the most data were accurately identified, there were a few average values that were reclassified as ''detection level limited.'' However, these corresponding run data were correctly identified and were included in the three times the detection limit methodology. Therefore, no D/F emission limits were impacted due to this review.

In addition, the EPA conducted a review of sampling volumes and detection levels across various emission testing ICR efforts on various combustion sources (See memorandum ''Updated data and procedure for handling below detection level data in analyzing various pollutant emissions databases for MACT and RTR emissions limits'' in the CISWI docket). As a result of this analysis, we have determined recommended values for three times the RDL (3xRDL) that may be used as a minimum emission limit value that can be accurately measured by most laboratories. These recommended values were then compared with calculated emission limits and, if the calculated limit is less than the recommended 3xRDL, the 3xRDL value is selected as the limit. This premise for this approach is the same as described in the final rule, but using a broader data set to establish the 3xRDL value. We have not changed the methodology of the emission limit calculation or tabulation of the three times the detection limit value that was used in the final CISWI rule. Therefore, we are not accepting comment on the emission limit calculation methodology.

One petitioner has suggested that D/F emission limits should not be less than 0.3 ng/dscm. We are requesting comment and data on whether 0.3 ng/dscm or the recommended 3xRDL values for each test method are sufficient to reflect quantifiable concentration levels, or whether other values should be selected as a lower quantification boundary for emission limits for CISWI sources.

10. Providing an Option for Sources To Use Emissions Averaging To Demonstrate Compliance

Several petitioners contend that the EPA did not adequately address comments on the issue of allowing sources with multiple CISWI units at a facility to use emissions averaging to demonstrate compliance, similar to the provisions provided in the major source boiler NESHAP. The boiler MACT allows emissions averaging across subcategories within an affected facility. The applicability of CISWI is such that each unit is an affected facility, if it otherwise meets the applicability of the rule. We cannot allow emissions averaging across affected facilities because we establish MACT on an affected facility basis and it would be impossible to justify MACT when averaged across affected facilities.

11. Definitions

a. Establishing a Definition of Foundry Sand Thermal Reclamation Unit

Following publication of the final rule and the NHSM rule, we were made aware of a certain class of unit that had not previously been considered a CISWI unit, but could potentially be considered a type of CISWI once the NHSM rule came into effect. These units are called TSR units, and are a component of a foundry's ''sand loop.'' We have concluded that these units are parts reclamation units as defined in the 2000 CISWI rule. We defined parts reclamation units as ''unit[s] that burn coatings off parts (*e.g.,* tools, equipment) so that the parts can be reconditioned and reused.'' In the 2011 CISWI rule, parts reclamation units are a subcategory of burn-off ovens. Thermal reclamation units that recover foundry sands serve the same purpose as other parts reclamation units that recover metal parts. Specifically, foundry sand units recover parts (*i.e.,* sand) by removing coatings (*e.g.,* binders and resins) from the foundry molds. Thus, TSR units are part reclamation units that remove coatings that are on foundry sand, which allows re-use of the sand. As with other burn-off ovens, TSR parts reclamation units conserve natural resources (*i.e.,* virgin sand) and minimize the use of landfill capacity for foundry sand.

As with other burn-off ovens, we do not currently have emissions data for TSR units and regulation of such units is not required to comply with the Agency's CAA 112(c)(6) obligation. For these reasons, we are not proposing standards for TSR units are this time.

We are soliciting comment on the proposed definition of TSR units.

b. Removing the Definition of Contained Gaseous Material

The EPA did not propose to remove the definition of contained gaseous material in the proposed CISWI standards. In the final CISWI rule preamble (76 FR 15708), we removed definitions that define or clarify what constitutes a solid waste from the standards to minimize confusion in light of the definition of solid waste in the final NHSM rule. The definition of ''contained gaseous material'' was one of the definitions that was removed from the 2000 CISWI standards.

Several petitioners asked for confirmation that the Agency had not changed its historical interpretation of what gases could be considered to be solid waste (*i.e.,* a ''contained gas''). These petitioners also requested that the EPA reconsider the removal of the definition of ''contained gaseous material'' in the CISWI rule, since the same definition appears in subparts EEEE and FFFF of part 60 (§ 60.2977 and § 60.3078) and subpart III of part 62 (§ 62.14840). The Agency did not intend to create ambiguity by removing the definition of ''contained gaseous material'' from the CISWI rule. Accordingly, the proposed CISWI reconsideration rule includes the same definition of ''contained gaseous material'' that was removed from the final CISWI rule. This definition is consistent with the definition in the subparts cited above. Moreover, our proposal to add the definition of ''contained gaseous material'' to the proposed CISWI reconsideration rule is consistent with the position in other sections of this preamble that address the NHSM rule where we make clear that the Agency is not changing any of its previous positions with regard to contained gas. The EPA is soliciting comment on the need to retain the definition of contained gaseous material.

c. Revising Definition of Chemical Recovery Unit

Following publication of the final rule and the NHSM rule, we received additional information about a handful of combustion units that had previously not been regulated as CISWI sources, but could potentially be considered a type of CISWI unit once the 2011 NHSM final rule came into effect. However, these units do not adequately fit into any of the four subcategories of units in the final CISWI standards. The units that have been identified are SARUs that may be burning sulfur-bearing compounds which are classified as non-hazardous waste at facilities that are non-RCRA part B permitted SARUs. Stakeholders have identified four such facilities, and have contended that response to comments and preamble language in both the 2011 NHSM final rule and the final CISWI rule are confusing and inadequately address their particular questions on applicability of CISWI to these units. The stakeholders ask specifically which subcategory should apply to these units,

noting that none of the four subcategory definitions expressly includes SARUs in their definitions. Furthermore, stakeholders note that the EPA has included a definition of chemical recovery unit in the final rule that more properly addresses SARUs as well as other types of chemical recovery unit.

To address this issue and clarify applicability for chemical recovery units more generally, we are revising the definition of chemical recovery unit to clarify that chemical recovery units are not incinerators, waste-burning kilns, ERUs or small, remote incinerators under subparts CCCC or DDDD.

12. Allowances for Using Feed Stream Analysis or Other Supplemental Information To Demonstrate Compliance

The final rule specifies emissions testing, continuous emissions monitoring, and control device parameter monitoring to ensure continuing compliance with the emission standards. Some petitioners have requested responses to comments on providing provisions that would allow use of feed stream analysis and other supplemental information instead of the monitoring requirements specified. As an example, petitioners have asked if a source could use a material analysis to show that only minimal amounts of a pollutant compound enter the combustion unit. That data, along with data on the flue gas flow rate information could be used by sources to calculate a maximum possible pollutant concentration. The petitioners further argue that the source could then demonstrate that the maximum potential concentration is less than the applicable emission limit, and the source would not have to perform an emissions test for that pollutant.

We have not proposed any such provisions in today's rule, and believe that direct measurement of emissions is the most comprehensive and accurate method to ascertain compliance with the final standards. Furthermore, CAA section 129(c) states that the EPA ''shall * * * promulgate regulations requiring the owner or operator of each solid waste incineration unit—(1) To monitor emissions from the unit at the point at which such emissions are emitted into the ambient air * * * and at such other points as necessary to protect public health and the environment.'' The EPA is thus constrained by the statute in our ability to implement the commenter's proposed monitoring approach.

13. Providing Percent Reduction Alternative Standards

The final rule contains numeric emission limits for all nine pollutants listed in CAA section 129(a)(4) (requiring numerical emissions limits for the 9 identified pollutants). The proposed and final rules describe at length the methodology used to establish these emission limits. However, petitioners and commenters suggested that the EPA should also establish alternative percent reduction standards to the numeric emission limits. Petitioners allege that we did not adequately address this comment in the preamble to our final rule or supporting documents. Therefore, we are providing our response to this issue in today's proposal.

The CISWI database does not include percent removal data except in very limited instances. These data were seldom provided voluntarily, and were not required by the EPA during the emission test ICR. This is due to the increased cost of performing pre- and post-emission control device emissions tests to determine the removal efficiency of the control device. Source operators will typically not choose to perform extra testing at additional cost voluntarily, and the EPA went to great lengths to minimize burden on sources during the testing ICR. As a result, we do not have percent reduction data for the best performing CISWI sources, and cannot develop a percent reduction alternative standard that reflects the best sources' performance.

Additionally, there are arguments that percent reduction standards are not legally permissible (See 74 FR 21149). As discussed in the Portland cement NESHAP proposal preamble, the Brick MACT opinion states ''that best performers are those emitting the least HAP.'' It further discusses how a percent reduction standard downplays the role of pollutant inputs on emissions, thereby allowing more pollutants to be emitted provided a given level of removal efficiency.

Finally, we do not specify the control devices necessary to meet the numeric limits as in some other rules. Sources may evaluate their source emissions and determine the appropriate control strategy or devices needed to comply with the emission limits. Percent reduction standards are more appropriately applied when there is a specified control device that potential emission streams must be routed through, such as a flare. In these cases, a percent reduction alternative provides a design and performance metric for the required type of control device. This is not the case with CISWI since the rule does not specify a control device for all sources.

Due to the reasons discussed above, we have not proposed any percent reduction alternative standards.

14. Providing Parametric Monitoring Provisions for Additional Control Device Types

The final rules added monitoring parameters for sources that use wet scrubbers, ESPs, activated carbon sorbent injection, or SCR. However, one petitioner has claimed that we did not adequately address comments on this issue in the final rule preamble or supporting documents. Therefore, we are responding that we have included such provisions that commenters requested. The control devices with monitoring provisions expressly identified in the rules should encompass most types of control devices that we would anticipate the various types of CISWI units to use to meet the emission limits. In the case that there is another type of control that is not addressed, we have provided provisions for sources to petition for specific operating limits for the control device to be established during a performance test. These provisions also allow specific operating limits to be established for CISWI units without any air pollution control devices, such as material balance operating limits to demonstrate continuous compliance. However, we recognize that dry sorbent injection for acid gas control may be one additional type of control that affected sources may use, and are requesting comment on whether we should specify monitoring provisions for this type of control and recommendations on which parameters should be specified. Lastly, we also request comment on whether there are any additional types of control devices that we should identify monitoring parameters for in the rule.

15. Revisions to the Continuous Monitoring Provisions for Large ERUs

In today's rule, we are proposing some revisions to the monitoring requirements for ERUs with a design heat input capacity greater than 250 MMBtu/hr. In the final rules, these units were required to monitor continuously for PM using a PM CEMS; however, recent EPA experience with the utility boiler source category has led the EPA to allow PM CEMS as an alternative, rather than a requirement. The PM CEMS technology may not be sufficient to certify accurate monitor performance in the PM concentration range of the CISWI ERU limits. Therefore, we are requiring continuous parameter

monitoring systems for these units similar to those being required for major industrial boilers and utility boilers. Likewise, to be consistent with these other rules, we have revised all operating parameter averaging for ERU units to be on a 30-day rolling average. Due to the relatively long operational campaigns of ERUs, the longer averaging time will allow operators sufficient flexibility for operational and control device adjustments should they be needed for short term fuel or waste characteristics variability. The EPA has determined the 30-day rolling average reporting basis is appropriate for this rule. The operating limits established through performance testing in this rule represent short term process and control operating conditions representative of compliance. Concerns of variability outside the operators control such as fuel content, seasonal factors, load cycling, and infrequent hours of needed operation prompted us to look at longer averaging periods on which to base operating compliance determination. We are aware from studies of emissions over long averaging periods (See memorandums ''Changing Averaging Time as an Incentive'' and ''Assessment of Using Single Point Stack Test Data to Derive 30–Day Rolling Average Emissions Limits'' in the CISWI docket) that long term (*e.g.,* 30-day) average emissions for a operating in compliance will have a variability of about half of that represented by the results of short term testing. Given that short term tests are representative of distinct points along a continuum of that inherent operational variability, we believe it appropriate to provide a means for the source operator to account for that variability by applying a long term average for establishing compliance. We expect more problematic control system variability (*e.g.,* ESP transformer failure or scrubber Venturi fan failure) to result in deviations from a 30-day average relative to compliance almost as much as for a shorter term average.

16. Extending Compliance Dates

On May 18, 2011, the EPA issued a stay of the effective date of the final rule. The EPA plans to reset the compliance dates of the rule when the final reconsideration is published. The EPA is proposing to set the compliance date for existing sources in the incinerator, ERU, and waste-burning kiln subcategories 5 years after the date of publication of the final reconsideration rule or 3 years after the state plan is approved, whichever happens earlier. This date is being proposed in order to provide facilities sufficient time to install controls or to make other compliance-related decisions. For new sources in the incinerator, ERU, and waste-burning kiln subcategories, the EPA is proposing to change the compliance date to 6 months after the date of publication of the final reconsideration rule. Since there were no major changes to the emission standards from final rule for the small remote incinerator subcategory, the EPA is soliciting comment on the need to extend the compliance date for this subcategory. Particularly, the EPA is requesting additional data that supports the need to revise the emission standards for the small remote incinerator subcategory.

The EPA determined that it is appropriate to extend the compliance dates for the incinerator, ERU, and waste-burning kiln subcategories for several reasons. First, proposed changes to the emission limits for these subcategories will have a significant impact on the compliance strategies that are selected by the affected sources. For instance, the proposed changes in emission limits for existing ERU, and waste-burning kiln subcategories may require different control strategies selections than the emission limits finalized in March 2011. Second, when the EPA announced the reconsideration and issued the stay of the effective date, a signal was sent to industry and to the states responsible for implementing the EG that requirements may change significantly. The resulting uncertainty has limited the ability of affected sources to begin making appropriate selections of control technologies and other compliance decisions. Even if significant changes were not being proposed, an extended compliance date would likely be necessary to provide enough time for facilities to achieve compliance. Additionally, not extending the compliance date may be problematic for states and implementing agencies since the increments of progress for rule compliance are keyed off of the approval date of the revised state plan. Without a final rule in place, states and implementing agencies will be unable to adequately update and implement a state plan. For all of the reasons discussed above, the EPA has determined that it is necessary to extend the compliance date for existing sources in the ERU and waste-burning kiln subcategories based on the date that the reconsideration of the final rule is completed. Finally, the EPA has received comments that the availability of control equipment and vendors to install control equipment for CISWI units is in question due to the large number of units requiring controls in conjunction with the parallel rulemaking for industrial boilers and electric generating units that will require controls from many of the same vendors. While the EPA believes that the maximum time allotted under section 129 provides enough time for CISWI units to achieve compliance, the EPA recognizes that maintaining the compliance dates from the final rule would essentially provide less than 2 years for states to implement a revised state plan and for increments of progress to be scheduled. Because the stringency of the final standards will not be determined until the reconsideration is final, sources will not be able to begin planning a compliance strategy and states will be uncertain on an appropriate schedule for increments of progress, which includes submittal of a final control plan. The EPA is requesting comment on the proposed changes to the compliance dates.

D. Technical Corrections and Clarifications

In today's rule, we are also proposing some changes to the final rule to correct minor typographical errors and clarify portions. This section of the preamble summarizes these corrections and clarifications.

1. Providing a Definition of Municipal Solid Waste

We are including the definition of ''municipal solid waste'' in the CISWI rule definitions. This definition is the same definition used in the CAA section 129 standards for MWC units. We believe that including this definition will further clarify applicability for MWC owners who question whether CISWI or MWC rules are applicable to their solid waste combustion unit.

2. Energy Recovery Units Designed to Burn Non-Coal Solid Materials

We are amending the definition of ''Energy recovery unit designed to burn biomass (Biomass)'' to clarify that this definition applies to all ERUs designed to burn non-coal solid materials. While we believe biomass to be the majority of such materials, we wanted to more broadly define this source category to clarify applicability for ERUs that are burning less than 10 percent coal on a heat input basis. We are also amending recordkeeping requirements for ERU units to require records of fuel inputs to ensure that the units are meeting the applicability for coal or non-coal ERUs.

3. Typographical Errors and Corrections

The following items are typographical errors in the final rule that we are correcting in today's proposal:

- Final rule § 60.2165, a new paragraph break is needed for (n)(4);
- Final rule § 60.2265, a new paragraph break is needed for the definition of ''Solid waste incineration unit;''
- Amendatory instruction #50, paragraph (b) was not added but was amended; and
- Footnote ''a'' for Table 9 to Subpart DDDD does not have the sentence allowing facilities to meet either the Total or TEQ for the D/F standard. It is included in all other tables (for new and existing sources).

E. Environmental, Energy and Economic Impacts

1. What are the primary air impacts?

We have estimated the potential emissions reductions from existing sources that may be achieved through implementation of the emission limits. However, we realize that some CISWI owners and operators are likely to determine that alternatives to waste incineration are viable, such as further waste segregation or sending the waste to a landfill or MWC, if available. In fact, sources operating incinerators, where energy recovery is not a goal, may find it cost-effective to discontinue use of their CISWI unit altogether. Therefore, we have estimated emissions reductions attributable to existing sources complying with the limits, as well as those reductions that would occur if the facilities with incinerators and small, remote incinerators decide to discontinue the use of their CISWI unit and use alternative waste disposal options.

For units combusting wastes for energy production, such as ERUs and waste-burning kilns, the decision to combust or not to combust waste will depend on several factors. One factor is the cost to replace the energy provided by the waste material with a traditional fuel, such as natural gas. Another factor would be whether the owner or operator is purchasing the waste or obtaining it at no cost from other generators, or if they are generating the waste on-site and will have to dispose of the materials in another fashion, such as landfills. Lastly, these units would have to compare the control requirements needed to meet the CISWI emission limits with those needed if they stop burning solid waste and are then subject to a NESHAP instead. As mentioned before, we have attempted to align the monitoring requirements for similar non-waste-burning sources as closely as possible in an effort to make them consistent and to help sources make the cross-walk between waste and non-waste regulatory requirements as simple as possible.

The emissions reductions that would be achieved under this proposed rule using the definition of solid waste under RCRA and the proposed CISWI emission limits are presented in Table 4 of this preamble.

TABLE 4—EMISSIONS REDUCTIONS FOR MACT COMPLIANCE AND ALTERNATIVE DISPOSAL OPTIONS FOR EXISTING CISWI USING THE EMISSION LIMITS

Pollutant	Reductions achieved through meeting MACT (ton/yr)	Reductions achieved assuming incinerators and small, remote incinerators use alternative disposal (ton/yr) [a]
HCl	578.0	590.1
CO	22,104	22,069
Pb	3.09	3.09
Cd	1.620	1.622
Hg	0.143	0.147
PM (filterable)	1,439	1,442
Dioxin, furans	0.000101	0.000104
NO_X	5,299	5,405
SO_2	4,983	5,033
Total	34,406	34,544

[a] The estimated emission reduction does not account for any secondary impacts associated with alternate disposal of diverted ERU fuel.

The EPA expects that many existing CISWI owners and operators may find that alternate disposal options are preferable to complying with the standards for the incinerator and small, remote incinerator subcategories. Our experience with regulations for MWC, HMIWI and, in fact, CISWI, has shown that negative growth in the source category historically occurs upon implementation of CAA section 129 standards. Since CISWI rules were promulgated in 2000 and have been in effect for existing sources since 2005, many existing units have closed. At promulgation in 2000, the EPA estimated 122 units in the CISWI population. In comparison, the incinerator subcategory in this rule, which contains any such units subject to the 2000 CISWI rule, has 28 units. The EPA is not aware of any construction of new units since 2000, so we do not believe there are any units that are currently subject to the 2000 CISWI NSPS. The revised CISWI rule is more stringent, so we expect this trend to continue. However, the EPA does recognize that some facilities may opt to replace aging incinerator units with new units where it is cost-effective or alternative disposal options are not feasible, as may be the case with some incinerators, or in very remote locations. We estimate that there could be one new incineration unit within the next 5 years following this proposal, and possibly five new small remote incinerators within that time. In these cases, we have developed model CISWI unit emissions reduction estimates for these subcategories using the current existing unit baseline, based on average emission concentration values and sizes from our current inventory and the new source proposed emission limits. Table 5 of this preamble presents the model plant emissions reductions that would be expected for new sources.

TABLE 5—EMISSIONS REDUCTIONS ON A MODEL PLANT BASIS

Pollutant	Emission reduction for CISWI subcategory model units (tpy unless otherwise noted)	
	Incinerator	Small, remote incinerator
HCl	3.67	0.0
CO	1.23	0.25
Pb	0.83	0.0037
Cd	0.022	0.0007
Hg	0.004	0.000012
PM (filterable)	148	0.5
D/F (total mass) [a]	0.0018	0.0
NO_X	16.3	0.15
SO_2	7.6	0.15
Total	178	1.05

[a] D/F estimates are given in lb/yr.

We do not anticipate that any new energy recovery or waste-burning kiln units will be constructed and will instead use alternative waste disposal methods or alternative fuels that will not subject them to the CISWI rule. For example, whole tires obtained from approved tire management programs and tire-derived fuel from which the metal has been removed is not considered solid waste under the definition of solid waste. Consequently, new cement kiln owners will assess their regulatory requirements under CISWI for burning whole tires or tire-derived fuel that does not have metals removed against the costs associated with removing the metal or obtaining tires from an approved source and complying with the applicable NESHAP instead of the CISWI rule. Our research suggests that metal removal is routinely practiced and that several state waste tire management programs are already in place, and would most likely be a

viable option for new kiln owners so that they would not be subject to the CISWI regulations. Indeed, we expect that all existing cement kilns that are classified as being waste-burning solely due to whole tires will, by the compliance date for the CISWI standards, find a way to obtain their tires through an approved tire management plan. Likewise, new sources could engineer their process to minimize waste generation in the first place, or to separate wastes so that the materials sent to a combustion unit would not meet the definition of solid waste to begin with. For waste that is generated, our cost analyses have found that alternative waste disposal is generally available and less expensive.

2. What are the water and solid waste impacts?

In our analysis, we have selected the lowest cost alternative (*i.e.,* compliance or alternative disposal) for each facility. We anticipate affected sources will need to apply additional controls to meet the emission limits. These controls may use water, such as wet scrubbers, which would need to be treated. We estimate an annual requirement of 90 billion gallons per year of additional water would be required as a result of operating additional controls or increased sorbent use.

Likewise, the addition of PM controls or improvements to controls already in place will increase the amount of particulate collected that will require disposal. Furthermore, ACI may be used by some sources, which will result in additional solid waste needing disposal. The annual amounts of solid waste that would require disposal are anticipated to be approximately 22,549 tpy from PM capture and 9,820 tpy from ACI.

Perhaps the largest impact on solid waste would come from owners and operators who decide to discontinue the use of their CISWI unit and instead send waste to the landfill or MWC for disposal. Based on tipping fees and availability, we would expect most, if not all, of this diverted waste to be sent to a local landfill. As we discuss above, it may be that a good portion of the incinerators would determine that alternative disposal is a better choice than compliance with the standards. We estimate that approximately 110,417 tpy of waste would be diverted to a landfill.

For new CISWI units, we estimate an annual requirement of 9,102 million gallons per year of additional water would be required as a result of operating additional controls. The annual amounts of solid waste that would require disposal are anticipated to be approximately 7,275 tpy from PM capture and 8,173 tpy from ACI.

3. What are the energy impacts?

The energy impacts associated with meeting the emission limits would consist primarily of additional electricity needs to run added or improved air pollution control devices. For example, increased scrubber pump horsepower may cause slight increases in electricity consumption and sorbent injection controls would likewise require electricity to power pumps and motors. In our analysis, we have selected the lowest cost alternative (*i.e.,* compliance or alternative disposal) for each facility. By our estimate, we anticipate that an additional 242,283 MW-hours per year would be required for the additional and improved control devices.

As discussed earlier, there could be instances where owners and operators of ERUs and waste-burning kilns decide to cease burning waste materials. In these cases, the energy provided by the burning of waste would need to be replaced with a traditional fuel, such as natural gas. Assuming an estimate that 50 percent of the energy input to ERUs and kilns are from waste materials, an estimate of the energy that would be replaced with a traditional fuel if all existing units stopped burning waste materials, is approximately 56 TBtu/yr.

For new CISWI units, we anticipate that 511 MW-hours per year would be required for additional and improved control devices. Since we do not anticipate any new energy recovery or waste-burning kiln units to be constructed, there would be no additional estimate for energy that would be replaced with a traditional fuel.

4. What are the secondary air impacts?

For CISWI units adding controls to meet the emission limits, we anticipate minor secondary air impacts. The combustion of fuel needed to generate additional electricity and to operate RTO controls would yield slight increases in emissions, including NO_X, CO, PM and SO_2 and an increase in CO_2 emissions. Since NO_X and SO_2 are covered by capped emissions trading programs, and methodological limitations prevent us from quantifying the change in CO and PM, we do not estimate an increase in secondary air impacts for this rule from additional electricity demand.

We believe it likely that the incinerators may elect to discontinue the use of their CISWI unit and send the waste to the landfill or other disposal means. As we discussed in the solid waste impacts above, this could result in approximately 110,417 tpy of waste going to landfills. By using the EPA's Landfill Gas Estimation Model, we estimate that, over the 20-year expected life of a CISWI unit, the resulting methane generated by a landfill receiving the waste would be about 96,300 tons. If this landfill gas were combusted in a flare, assuming typical flare emission factors and landfill gas chlorine, Hg, and sulfur concentrations, the following emissions would be expected: 20 tons of PM; 8 tons of HCl; 16 tons of SO_2; 890 tons of CO; 46 tons of NO_X; and 1.4 lbs of Hg.

Similar to existing units, we anticipate minor secondary air impacts for new CISWI units adding controls as discussed above.

5. What are the cost and economic impacts?

We have estimated compliance costs for all existing units to add the necessary controls and monitoring equipment, and to implement the inspections, recordkeeping and reporting requirements to comply with the proposed CISWI standards. We have also analyzed the costs of alternative disposal for the subcategories that may have alternative options to burning waste, specifically for the incinerators and the small, remote incinerators that may have an alternative to incineration. In our analysis, we have selected the lowest cost alternative (*i.e.,* compliance or alternative disposal) for each facility. Based on this analysis, we anticipate an overall total capital investment of $859 million with an associated total annual cost of $270 million ($2008).

Under the rule, the EPA's economic model suggests the average national market-level variables (prices, production-levels, consumption, international trade) will not change significantly (*e.g.,* are less than 0.02 percent).

The EPA performed a screening analysis for impacts on small entities by comparing compliance costs to sales/revenues (*e.g.,* sales and revenue tests). The EPA's analysis found the tests were below 3 percent for five of the nine small entities included in the screening analysis.

In addition to estimating this rule's social costs and benefits, the EPA has estimated the employment impacts of the final rule. We expect that the rule's direct impact on employment will be small. We have not quantified the rule's indirect or induced impacts. For further explanation and discussion of our analysis, see Chapter 4 of the RIA.

For new CISWI units, we have estimated compliance costs for units

coming online in the next 5 years. This analysis is based on the assumption that one new incinerator will come online over 5 years and one new small, remote incinerator will come online each year over the next 5 years. Additionally, it was assumed that each model unit will add the necessary controls, monitoring equipment, inspections, recordkeeping, and reporting requirements to comply with NSPS limits. Based on our analysis, we anticipate an overall total capital investment of $8.4 million over 5 years with an associated total annual cost (for 2015) of $2.6 million.

6. What are the benefits?

We estimate the monetized benefits of this regulatory action to be $330 million to $800 million (2008$), 3 percent discount rate) in the implementation year (2015). The monetized benefits of the regulatory action at a 7 percent discount rate are $300 million to $720 million (2008$). These estimates reflect energy disbenefits valued at $3.8 million. Using alternate relationships between $PM_{2.5}$ and premature mortality supplied by experts, higher and lower benefits estimates are plausible, but most of the expert-based estimates fall between these two estimates.[1] A summary of the monetized benefits estimates at discount rates of 3 percent and 7 percent is in Table 6 of this preamble.

TABLE 6—SUMMARY OF THE MONETIZED BENEFITS ESTIMATES FOR THE CISWI NSPS AND EG IN 2015

[Millions of 2008$] [a, thnsp;b]

Pollutant	Estimated Emission Reductions (tpy)	Total Monetized Benefits (3% Discount Rate)	Total Monetized Benefits (7% Discount Rate)
$PM_{2.5}$	670	$150 to $370	$140 to $340.
$PM_{2.5}$ Precursors			
SO_2	5,033	$150 to $360	$130 to $330.
NO_X	5,405	$26 to $64	$24 to $58.
Total		$330 to $800	$300 to $720.

[a] All estimates are for the implementation year (2015) and are rounded to two significant figures so numbers may not sum across rows. All fine particles are assumed to have equivalent health effects, but the benefit-per-ton estimates vary between precursors because each ton of precursor reduced has a different propensity to form $PM_{2.5}$. Benefits from reducing HAP are not included. These estimates do not include the energy disbenefits valued at $3.8 million, but the rounded totals do not change. CO_2-related disbenefits were calculated using the social cost of carbon, which is discussed further in the RIA.

[b] The estimates in this table reflect the estimates in the RIA. Due to last minute changes to the March 2011 final CISWI rule, we were unable to incorporate the final engineering costs and emission reductions into the RIA, which would decrease the costs by approximately 22 percent and increase the monetized benefits by approximately 4 percent from those shown here.

These benefits estimates represent the total monetized human health benefits for populations exposed to less $PM_{2.5}$ in 2015 from controls installed to reduce air pollutants in order to meet these standards. These estimates are calculated as the sum of the monetized value of avoided premature mortality and morbidity associated with reducing a ton of $PM_{2.5}$ and $PM_{2.5}$ precursor emissions. To estimate human health benefits derived from reducing $PM_{2.5}$ and $PM_{2.5}$ precursor emissions, we used the general approach and methodology laid out in Fann, Fulcher, and Hubbell (2009).[2]

To generate the benefit-per-ton estimates, we used a model to convert emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors into changes in ambient $PM_{2.5}$ levels and another model to estimate the changes in human health associated with that change in air quality. Finally, the monetized health benefits were divided by the emission reductions to create the benefit-per-ton estimates. These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because there is no clear scientific evidence that would support the development of differential effects estimates by particle type. Directly emitted $PM_{2.5}$, SO_2 and NO_X are the primary precursors affected by this rule. Even though we assume that all fine particles have equivalent health effects, the benefit-per-ton estimates vary between precursors because each ton of precursor reduced has a different propensity to form $PM_{2.5}$. For example, SO_2 has a lower benefit-per-ton estimate than direct $PM_{2.5}$ because it does not directly transform into $PM_{2.5}$, and because sulfate particles formed from SO_2 emissions can transport many miles, including over areas with low populations. Direct $PM_{2.5}$ emissions convert directly into ambient $PM_{2.5}$, thus, to the extent that emissions occur in population areas, exposures to direct $PM_{2.5}$ will tend to be higher, and monetized health benefits will be higher than for SO_2 emissions.

For context, it is important to note that the magnitude of the PM benefits is largely driven by the concentration response function for premature mortality. Experts have advised the EPA to consider a variety of assumptions, including estimates based on both empirical (epidemiological) studies and judgments elicited from scientific experts, to characterize the uncertainty in the relationship between $PM_{2.5}$ concentrations and premature mortality. For this rule, we cite two key empirical studies, the American Cancer Society cohort study[3] and the extended Six Cities cohort study.[4] In the RIA for this rule, which is available in the docket, we also include benefits estimates derived from expert judgments and other assumptions.

The EPA strives to use the best available science to support our benefits analyses. We recognize that interpretation of the science regarding air pollution and health is dynamic and

[1] Roman, *et al.,* 2008. Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the U.S. Environ. Sci. Technol., 42, 7, 2268—2274.

[2] Fann, N., C.M. Fulcher, B.J. Hubbell. 2009. ''The influence of location, source, and emission type in estimates of the human health benefits of reducing a ton of air pollution.'' Air Qual Atmos Health (2009) 2:169–176.

[3] Pope, *et al.,* 2002. ''Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution.'' *Journal of the American Medical Association.* 287:1132–1141.

[4] Laden, *et al.,* 2006. ''Reduction in Fine Particulate Air Pollution and Mortality.'' *American Journal of Respiratory and Critical Care Medicine.* 173: 667–672.

evolving. After reviewing the scientific literature and recent scientific advice, we have determined that the no-threshold model is the most appropriate model for assessing the mortality benefits associated with reducing $PM_{2.5}$ exposure. Consistent with this recent advice, we are replacing the previous threshold sensitivity analysis with a new ''LML'' assessment. While a LML assessment provides some insight into the level of uncertainty in the estimated PM mortality benefits, the EPA does not view the LML as a threshold and continues to quantify PM-related mortality impacts using a full range of modeled air quality concentrations.

Most of the estimated PM-related benefits in this rule would accrue to populations exposed to higher levels of $PM_{2.5}$. Using the Pope, *et al.,* (2002) study, 85 percent of the population is exposed at or above the LML of 7.5 μg/m³. Using the Laden, *et al.,* (2006) study, 40 percent of the population is exposed above the LML of 10 μg/m³. It is important to emphasize that we have high confidence in $PM_{2.5}$-related effects down to the lowest LML of the major cohort studies. This fact is important, because as we estimate PM-related mortality among populations exposed to levels of $PM_{2.5}$ that are successively lower, our confidence in the results diminishes. However, our analysis shows that the great majority of the impacts occur at higher exposures.

This analysis does not include the type of detailed uncertainty assessment found in the 2006 $PM_{2.5}$ NAAQS RIA because we lack the necessary air quality input and monitoring data to run the benefits model. In addition, we have not conducted any air quality modeling for this rule. The 2006 $PM_{2.5}$ NAAQS benefits analysis [5] provides an indication of the sensitivity of our results to various assumptions.

It should be emphasized that the monetized benefits estimates provided above do not include benefits from several important benefit categories, including reducing other air pollutants, ecosystem effects, and visibility impairment. The benefits from reducing HAP have not been monetized in this analysis, including reducing 25,000 tons of CO, 470 tons of HCl, 4.1 tons of Pb, 0.95 tons of Cd, 260 pounds of Hg and 92 grams of total D/F each year. Although we do not have sufficient information or modeling available to provide monetized estimates for this rulemaking, we include a qualitative assessment of the health effects of these air pollutants in the RIA for this rule, which is available in the docket.

In addition, the monetized benefits estimates provided in Table 12 of this preamble do not reflect the disbenefits associated with increased electricity and fuel consumption to operate the control devices. We estimate that the increases in emissions of CO_2 would have disbenefits valued at $3.8M at a 3 percent discount rate. Carbon Dioxide-related disbenefits were calculated using the social cost of carbon, which is discussed further in the RIA. However, these disbenefits do not change the rounded total monetized benefits. In the RIA, we also provide the monetized CO_2 disbenefits using discount rates of 5 percent (average), 2.5 percent (average), and 3 percent (95th percentile).

II. NHSM Proposed Revisions

A. Statutory Authority

The EPA is proposing amendments to the NHSM regulations under the authority of sections 2002(a)(1) and 1004(27) of the RCRA, as amended, 42 U.S.C. 6912(a)(1) and 6903(27). Section 129(a)(1)(D) of the CAA directs the EPA to establish standards for CISWI, which burn solid waste. Section 129(g)(6) provides that the term ''solid waste'' is to be established by the EPA under RCRA (42 U.S.C. 7429). Section 2002(a)(1) of RCRA authorizes the Agency to promulgate regulations as are necessary to carry out its functions under the Act. The statutory definition of ''solid waste'' is provided in RCRA section 1004(27).

B. What is the intent of this proposal?

Today's proposal would clarify several provisions in 40 CFR part 241, which provides the standards and procedures for identifying whether NHSM are solid waste when used as fuels or ingredients in combustion units. The part 241 regulations were promulgated on March 21, 2011, in the ''Identification of Non-Hazardous Secondary Materials That Are Solid Waste'' final rule (the 2011 NHSM final rule).[6] On the same day, the EPA promulgated final emissions standards for both area and major source boilers and process heaters under section 112 of the CAA and for CISWI under section 129 of the CAA, as well as for new and existing sewage sludge incinerators.[7] These rules are interrelated because facilities that burn solid waste, as that term is defined under section 129(g)(6) of the CAA, are regulated as CISWI units pursuant to section 129 and facilities that do not burn solid waste are regulated as boilers and process heaters, under section 112.

Since promulgation of the 2011 NHSM final rule, the regulated community has raised a number of issues and concerns regarding the part 241 requirements, including the implementation of those requirements. For example, the regulated community raised concerns and questions as to certainty about whether particular materials are solid wastes and how they could demonstrate compliance with the legitimacy criteria—with most focusing on the contaminant legitimacy criterion for NHSM used as fuels (codified in § 241.3(d)(1)(iii)). Further, the regulated community asserts that under the current NHSM rule, waste streams that the Agency itself found to be non-waste fuels when combusted may not meet the legitimacy criteria as established (*e.g.,* resinated wood). It was also brought to the Agency's attention that the provision identifying tires recovered from an established tire collection program as a non-waste fuel when combusted is limited to tires ''from the point of removal from the vehicle through arrival at the combustion facility.'' The regulated community asserts that this language precludes burning as a non-waste fuel off-specification tires (including factory scrap tires) that have never been placed on an automobile, even though they are not discarded.

The Agency has re-examined the 2011 NHSM final rule and is proposing amendments and clarifications on certain issues on which we have received new information, as well as specific targeted revisions that are appropriate in order to allow implementation of the rule as the EPA originally intended. The Agency is not reopening the entire rule for reconsideration and will not respond to comments directed toward rule provisions that are not specifically identified in this proposal.

[5] U.S. Environmental Protection Agency, 2006. Final Regulatory Impact Analysis: $PM_{2.5}$ NAAQS. Prepared by Office of Air and Radiation. October. Available on the Internet at *http://www.epa.gov/ttn/ecas/ria.html.*

[6] 76 FR 15456.

[7] See National Emissions Standards for Area Source Industrial, Commercial, and Institutional Boilers (76 FR 15554), National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (76 FR 15608), Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units (76 FR 15704), and Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units (76 FR 15372). We also note that on the same day, EPA announced it was initiating a reconsideration process with respect to certain aspects of the CAA section 112 and 129 rules so as to take additional comment and provide opportunity for submission of information relevant to those standards. 76 FR 15266.

C. What is the scope of this proposal?

The regulatory changes being proposed today are summarized below. The intent of this summary is to give a brief overview of the proposed changes. More detailed discussions, including the Agency's rationale for these proposed changes, are discussed in section II.D of today's action. In addition, to aid commenters in their review, the EPA has also included in the docket for today's proposal an informational redline/strikeout version of the proposed revised regulations as compared to the current CFR.

The EPA is soliciting comment only on these targeted changes and is not reopening any other issues in the final NHSM rule. Comments that go beyond the scope of this narrow RCRA rulemaking will not be addressed by the Agency when it finalizes today's proposed rule.

1. Revised Definitions

In today's action, the EPA is proposing to revise certain definitions codified in § 241.2. Specifically, the EPA is proposing to revise, for the purposes of clarifying the regulations, the following definitions: (1) ''clean cellulosic biomass,'' (2) ''contaminants,'' and (3) ''established tire collection programs.''

a. Clean Cellulosic Biomass

The EPA is proposing to revise the definition of ''clean cellulosic biomass'' to list additional examples of biomass materials that are appropriately included within this definition. The 2011 NHSM final rule defined ''clean cellulosic biomass'' as meaning ''those residuals that are akin to traditional cellulosic biomass, such as forest-derived biomass (*e.g.,* green wood, forest thinnings, clean and unadulterated bark, sawdust, trim, and tree harvesting residuals from logging and sawmill materials), corn stover and other biomass crops used specifically for energy production (*e.g.,* energy cane, other fast growing grasses), bagasse and other crop residues (*e.g.,* peanut shells), wood collected from forest fire clearance activities, trees and clean wood found in disaster debris, clean biomass from land clearing operations, and clean construction and demolition wood. These fuels are not secondary materials or solid wastes unless discarded. Clean biomass is biomass that does not contain contaminants at concentrations not normally associated with virgin biomass materials'' (codified in 40 CFR 241.2).

In today's proposal, the EPA is adding more examples of biomass materials that should be included within this definition. This regulatory revision would not change the Agency's intent under the March 2011 final rule, but would identify additional materials that are ''clean cellulosic biomass,'' and, thus, would be a traditional fuel under these regulations. While the list of clean biomass materials is not exhaustive, it is more comprehensive than the list that appeared in the definition included in the 2011 NHSM final rule.

Thus, the EPA is proposing to revise the definition of ''clean cellulosic biomass'' as follows: ''Clean cellulosic biomass means those residuals that are akin to traditional cellulosic biomass, including, but not limited to: agricultural and forest-derived biomass (*e.g.,* green wood, forest thinnings, clean and unadulterated bark, sawdust, trim, tree harvesting residuals from logging and sawmill materials, hogged fuel, wood pellets, untreated wood pallets); urban wood (*e.g.,* tree trimmings, stumps, and related forest-derived biomass from urban settings); corn stover and other biomass crops used specifically for the production of cellulosic biofuels (*e.g.,* energy cane, other fast growing grasses, byproducts of ethanol natural fermentation processes); bagasse and other crop residues (*e.g.,* peanut shells, vines, orchard trees, hulls, seeds, spent grains, cotton byproducts, corn and peanut production residues, rice milling and grain elevator operation residues); wood collected from forest fire clearance activities, trees and clean wood found in disaster debris, clean biomass from land clearing operations, and clean construction and demolition wood. These fuels are not secondary materials or solid wastes unless discarded. Clean biomass is biomass that does not contain contaminants at concentrations not normally associated with virgin biomass materials.''

In accordance with the above traditional fuels definition, clean construction and demolition wood could be combusted as a traditional fuel if it does not contain contaminants at concentrations not normally associated with virgin wood. However, the final NHSM rule also addressed construction and demolition wood that may contain contaminated material (76 FR 15485). Additionally, construction and demolition wood that has been processed (*e.g.,* sorted) to remove contaminants (such as lead-painted wood, treated wood containing contaminants such as arsenic and chromium, metals and other non-wood materials), and is size-reduced prior to burning likely meets the processing and legitimacy criteria for contaminants, and thus can be combusted as a non-waste fuel. Such construction and demolition wood may contain de minimis amounts of contaminants and other materials provided it meets the legitimacy criteria for contaminant levels (76 FR 154586).

See section II.D.1 for more information regarding the revised definition of ''clean cellulosic biomass.''

b. Contaminants

The 2011 NHSM final rule defined ''contaminants'' as meaning ''any constituent in non-hazardous secondary materials that will result in emissions of the air pollutants identified in Clean Air Act section 112(b) or the nine pollutants listed under Clean Air Act section 129(a)(4) when such non-hazardous secondary materials are burned as a fuel or used as an ingredient, including those constituents that could generate products of incomplete combustion'' (codified in 40 CFR 241.2).

The EPA is proposing to revise the definition of ''contaminants'' to clarify what will be considered contaminants for the purposes of the legitimacy criteria. Specifically, several pollutants listed in CAA sections 112(b) and 129(a)(4) form during combustion, so elemental precursors to those pollutants that are found in the NHSM prior to combustion are being added to the revised contaminant definition in place of the pollutants themselves. In addition, those pollutants from CAA section 112(b) and 129(a)(4) lists that we do not expect to find in any NHSM are also specifically excluded from the definition of contaminants (see discussion in section II.D.1.b). We do not expect this change to affect any of the decisions previously made on whether NHSMs are solid wastes when burned as fuels.

We are also proposing to revise this definition to clarify that, for the purpose of meeting the contaminant legitimacy criterion, contaminant levels found in the NHSM prior to being fed into combustion units, should be evaluated rather than emissions from those units. Specifically, there appears to be confusion within the regulated community that in determining whether or not a NHSM meets the ''contaminant legitimacy criterion,'' emissions from the combustion unit are to be considered in making such an evaluation. Both in today's proposal and in the 2011 NHSM final rule preamble and regulatory text, it was clear that the NHSM itself was to be evaluated and not the emissions from the combustion unit. This approach is more appropriate, since the question is whether or not a NHSM is being burned for discard, and elevated contaminant levels in the

NHSM could be indicative of burning for discard. Thus, the EPA is clearing up any inadvertent ambiguity in the regulation itself. The rationale for this approach can be found in the rulemaking record for the final rule.[8] EPA is not proposing any revisions to that approach, but is simply clarifying the regulatory text to better reflect the Agency's intention.

Thus, the Agency is proposing to revise the definition of ''contaminants'' as follows: ''Contaminants means all pollutants listed in Clean Air Act sections 112(b) and 129(a)(4), with modifications outlined in this definition to reflect constituents found in non-hazardous secondary materials prior to combustion. The definition includes the following elemental contaminants that commonly form Clean Air Act section 112(b) and 129(a)(4) pollutants: Antimony, arsenic, beryllium, cadmium, chlorine, chromium, cobalt, fluorine, lead, manganese, mercury, nickel, nitrogen, selenium, and sulfur. The definition does not include the following Clean Air Act section 112(b) and 129(a)(4) pollutants that are either unlikely to be found in non-hazardous secondary materials prior to combustion or are adequately measured by other parts of this definition: Hydrogen chloride (HCl), chlorine gas (Cl_2), hydrogen fluoride (HF), nitrogen oxides (NO_X), sulfur dioxide (SO_2), fine mineral fibers, particulate matter, coke oven emissions, diazomethane, white phosphorus, titanium tetrachloride, m-cresol, o-cresol, p-cresol, m-xylene, o-xylene, and p-xylene.'' For more information and the rationale regarding the proposed revision to the definition of ''contaminants,'' see section II.D.1 of today's proposed rule.

c. Established Tire Collection Programs

The EPA is proposing to revise the definition of ''established tire collection programs'' to clarify that off-specification tires (including factory scrap tires) are not discarded when combusted, in the same way as tires that are removed from vehicles.

The 2011 NHSM final rule defined ''established tire collection program'' as meaning ''a comprehensive collection system that ensures scrap tires are not discarded and are handled as valuable commodities in accordance with section 241.3(b)(2)(i) from the point of removal from the vehicle through arrival at the combustion facility'' (codified in 40 CFR 241.2). However, that definition did not account for ''factory scrap'' or ''off-specification'' tires that are contractually arranged to be collected, managed, and transported between a tire manufacturer (including retailers or other parties involved in the distribution and sale of new tires) and a combustor, which is analogous to how scrap tires removed from vehicles are managed.

Thus, the Agency is proposing to revise the definition of ''established tire collection program'' to mean ''a comprehensive collection system or contractual arrangement that ensures scrap tires are not discarded and are handled as valuable commodities through arrival at the combustion facility.'' For more information regarding the proposed revision to the definition of ''established tire collection program,'' see section II.D.1 of today's proposed rule.

2. Contaminant Legitimacy Criterion for NHSM Used as Fuels

The 2011 NHSM final rule codified three self-implementing legitimacy criteria that NHSM must meet in order to be considered a non-waste fuel when burned in a combustion unit (40 CFR 241.3(d)(1)(i)–(iii)). One of these criteria focused on comparing levels of contaminants contained in the NHSM to levels of those constituents found in traditional fuels. Specifically, the contaminant legitimacy criterion for fuels was finalized as follows: ''The non-hazardous secondary material must contain contaminants at levels comparable in concentration to or lower than those in traditional fuels which the combustion unit is designed to burn. Such comparison is to be based on a direct comparison of the contaminant levels in the non-hazardous secondary material to the traditional fuel itself.'' 40 CFR 241.3(d)(1)(iii). The existing language provides flexibility for persons to make comparisons on a contaminant-by-contaminant basis or on a group of contaminants-by-group of contaminants basis in determining what constituents to compare. The phrase ''traditional fuels which the combustion unit is designed to burn'' also provides the flexibility to choose among multiple fuel options.

Industry groups have expressed concern that the regulatory language does not clearly reflect the EPA's intent.[9] The EPA agrees that the regulatory language can be revised to better reflect the EPA's intent in implementing the contaminant legitimacy criterion. Therefore, the Agency is proposing to revise this criterion to read, ''The non-hazardous secondary material must contain contaminants or groups of contaminants at levels comparable in concentration to or lower than those in traditional fuel(s) which the combustion unit is designed to burn. In determining which traditional fuel(s) a unit is designed to burn, persons can choose a traditional fuel that can be or is burned in the particular type of boiler, whether or not the combustion unit is permitted to burn that traditional fuel. In comparing contaminants between traditional fuel(s) and a non-hazardous secondary material, persons can use ranges of traditional fuel contaminant levels compiled from national surveys, as well as contaminant level data from the specific traditional fuel being replaced. Such comparisons are to be based on a direct comparison of the contaminant levels in both the non-hazardous secondary material and traditional fuel(s) prior to combustion.'' We are taking comment on how this revised contaminant legitimacy criterion would apply to specific fuels.

For more information regarding the proposed revisions to the contaminant legitimacy criterion for NHSM used as fuels, see section II.D.2 of today's proposed rule.

3. Categorical Non-Waste Determinations for Specific NHSM Used as Fuels

The EPA is proposing to identify several NHSMs as not being solid waste when burned as a fuel in a combustion unit where the Agency has sufficient information to determine that discard is not occurring when these materials are being used as fuels. Specifically, the Agency recognizes that certain NHSMs may not meet the legitimacy criteria, especially the ''contaminant legitimacy criterion,'' in all instances, but the material would still generally be considered a non-waste fuel. While we do not agree it is appropriate for the regulated community to make these judgments as part of the self-implementing aspects of the NHSM final rule, it is appropriate that the Agency do so, by balancing the legitimacy criteria and such other relevant factors that the Administrator may identify, in determining that a NHSM is not a solid waste when used as a fuel in a combustion unit. Thus, in today's proposed rule, we are identifying the following specific materials as non-waste fuels: (1) scrap tires that have not been discarded and are managed under the oversight of established tire collection programs, including tires removed from vehicles

[8] For example, see 76 FR 15524–5.

[9] See, for example, June 24, 2011 letter from Tracey Norberg of the Rubber Manufacturers Association and Paul Noe of the American Forest & Paper Association to OSWER Assistant Administrator Mathy Stanislaus. A copy of this letter can be found in the docket for today's rule.

and off-specification tires, and (2) resinated wood. Thus, persons who burn these NHSMs as a fuel would not need to evaluate them using the self-implementing legitimacy criteria when burned.

In addition, the Agency recognizes that there may be other NHSMs that should also be considered non-waste fuels, based on a balancing of the legitimacy criteria with other relevant factors. Therefore, we are proposing to create a petition process that would provide the regulated community an opportunity to submit a rulemaking petition to the EPA for a determination that a particular NHSM should not be considered solid waste when burned as a fuel in a combustion unit. This process could be used when a facility does not believe that the self-implementing legitimacy criteria yields a clear result or does not accurately reflect whether the material is being discarded. A brief discussion of the specific NHSMs being proposed to be listed as not solid waste is provided below, as well as an overview of the petition process for identifying additional NHSMs as not being solid wastes when burned as a fuel in a combustion unit for energy recovery. See section II.D.3 and 4 of today's proposed rule for a detailed discussion of these topics.

a. Scrap Tires

In the 2011 NHSM final rule, the EPA determined that scrap tires removed from vehicles and managed pursuant to established tire collection programs would not be considered a solid waste. This determination was codified in § 241.3(b)(2)(i). This determination was made after the EPA analyzed scrap tires removed from vehicles and managed pursuant to established tire collection programs and concluded that (1) these materials would meet the legitimacy criteria for fuels, and (2) these materials were not discarded when transferred off-site from the generating facility.[10]

Since promulgation of the 2011 NHSM final rule, the EPA has received information that tire manufacturers, including downstream distribution channels, may produce tires that are not suitable for use on vehicles, but like the tires removed from vehicles, are usable as legitimate fuels. They are, for all intents and purposes, the same as the vehicle tires managed under the oversight of established tire collection programs. As a result, the revised definition of ''established tire collection program,'' would encompass off-specification tires (including factory scrap tires) that are contractually arranged to be collected, managed, and transported between a tire manufacturer, which would include retailers and other parties involved in the distribution and sale of new tires and a combustor. We note that tires coming from vehicles that are part of an established tire collection program would be a non-waste fuel under the 2011 NHSM final rule. The EPA is not reopening this determination in today's proposed rule.

For clarity, the Agency is proposing to add scrap tires that are not discarded and are managed under the oversight of established tire collection programs, including tires removed from vehicles and off-specification tires, to the categorical list of non-waste fuels (see 40 CFR 241.4(a)). For more on this determination and the off-specification tires from tire manufacturers or downstream distribution channels, see section II.D.3 of today's proposed rule.

b. Resinated Wood

The 2011 NHSM final rule determined that resinated wood is not a solid waste when used as a fuel regardless of whether it remained within the control of the generator (see 40 CFR 241.3(b)(2)(ii)). This determination was made after the EPA analyzed resinated wood and concluded that (1) resinated wood generally would meet the legitimacy criteria for fuels, and (2) resinated wood was not discarded when transferred off-site from the generating facility.[11] Today's action proposes to revise part 241 to state affirmatively that resinated wood, when used as a fuel, is not being burned for discard and is not a solid waste. We are proposing to codify this determination based on our belief that the use of resinated wood as fuel represents an integral component to the wood manufacturing process and, as such, resinated wood is not being discarded, and therefore not solid waste, when burned as fuel. For more on this proposed revision, see section II.D.3 of today's proposed rule.

c. Rulemaking Petition Process for Other Non-Waste Determinations

Under today's rule, the Agency is proposing to create a rulemaking petition process that would provide persons an opportunity to submit a rulemaking petition to the Administrator, seeking a categorical determination for additional NHSMs to be listed in section 241.4(a) as non-waste fuels. The process for submitting a rulemaking petition to the Agency, as well as the factors a successful application must include, is proposed in 241.4(b). For more information regarding the rulemaking petition process, see section II.D.4 of today's proposal. Parties have identified the potential of manure not being solid waste. Parties can present information including data demonstrating that manure is not discarded either through the existing non-waste petition process or the proposed categorical determination process.

4. Additional Request for Comment

As discussed elsewhere in this preamble, the Agency requests additional information regarding pulp and paper sludge in order for the Agency to determine whether a categorical determination that pulp and paper sludge is a non-waste, when used as fuel, is appropriate. Information that would be particularly helpful includes: (1) Documentation of how the use of pulp and paper sludges that are used as a fuel are integrated into the industrial production process and the steps taken industry-wide to ensure that this NHSM is consistently used as a legitimate fuel and is not discarded, including when transferred to a different person for use as a fuel; (2) documentation on the amount of pulp and paper sludges burned as a fuel (whether within the control of the generator or outside the control of the generator), and what determines which pulp and paper sludges are burned as a fuel, as opposed to being land applied or disposed; (3) additional data regarding the contaminant levels of the various HAP, such as chlorine and metals, and what steps the industry has taken to ensure the quality of these sludges when used as a fuel are consistent with that of fuel product; (4) information on standard practices used to ensure that these sludges have a meaningful heating value, including the types of dewatering and other processing steps that these sludges are subject to, as well as information on whether any pulp and paper sludges that are burned as a fuel are done so without any processing, including dewatering; and (5) when shipped to a different person for use as a fuel, how these sludges are managed, including how they are shipped, any processing that may occur, and how long these sludges are typically stored prior to being burned as a fuel.

5. Clarification Letters Issued After Promulgation of the NHSM Final Rule

After promulgation of the 2011 NHSM final rule, a number of questions were raised regarding certain issues,

[10] See 76 FR 15490–15499.

[11] For a full discussion and rationale for why EPA reached this conclusion, see 76 FR 15499–15502.

including whether the EPA was changing its position regarding ''contained gaseous materials'' and whether they are solid wastes when burned in combustion units. While there was no regulatory text or discussion in the preamble to the final NHSM rule, the Agency did respond to several comments that were submitted to the EPA during the comment period. Specifically, its response to the fourth comment in part 3b.I3 of the document entitled, ''Responses to Comments Document for the Identification of Non-Hazardous Secondary Materials that are Solid Waste (February 2011),'' [12] created concerns among the regulated community that the Agency had changed a long-standing interpretation of what constitutes a ''contained gaseous material'' for purposes of defining the term solid waste under RCRA.

In a letter sent to the American Forest and Paper Association, the EPA clarified that it was not changing its previous interpretations and that such interpretations still were the Agency's position.[13] Specifically, as we state in the letter, ''EPA was responding to a comment requesting that we include in the NHSM final rule a definition of 'contained gaseous material.' The Agency does not believe that including such a definition in the rule is necessary. However, our response seems to have caused confusion about whether the Agency was changing its prior interpretations regarding the burning of gaseous materials, for example in fume incinerators, and whether or not such burning is considered to be treatment of a solid waste by burning. The response does not change any previous EPA positions. We clarify here that the Agency's previous statements and interpretations remain effective. Thus, burning of gaseous material, such as in fume incinerators (as well as other combustion units, including air pollution control devices that may combust gaseous material) does not involve treatment or other management of a solid waste (as defined in RCRA section 1004(27).'' Thus, we are stating again in the preamble to today's proposed rule that we are not changing any of our previous interpretations as it relates to whether ''contained gaseous material'' is a solid waste.

In addition to this letter, the Agency has also issued a number of other letters in which we clarify how the 2011 NHSM final rule addresses certain materials or activities. For example, the EPA has issued clarification letters covering the following materials and issues: (1) July 21, 2011, letter to Pamela F. Faggert, Dominion Resources Services, regarding materials that are used in recirculation/reinjection processes and CBO units; (2) August 5, 2011, letter to Sue Briggum, Waste Management, regarding landfill gas; (3) August 5, 2011, letter to Tracey Norberg, Rubber Manufacturers Association, regarding off-specification tires (including factory scrap tires); and (4) August 15, 2011, letter to Jeff A. McNelly, ARIPPA, regarding coal refuse in legacy piles. We are not taking comment on these letters, since they reflect the Agency's interpretation of its existing March 21, 2011, NHSM rule.

6. Clarification of the Process for Submittal of Non-Waste Petitions

The 2011 NHSM final rule established a non-waste determination process that provides persons with an administrative petition process for receiving a formal determination from the EPA Regional Administrator that a NHSM that is used as a fuel, and which is not managed within the control of the generator, can be considered a non-waste fuel provided they are able to demonstrate that such material has not been discarded and is indistinguishable in all relevant aspects from a fuel product. (40 CFR 241.3(c)).

As discussed in the March 21, 2011 final rule (76 FR 15471), EPA has not arbitrarily determined that secondary materials transferred between companies are wastes. Instead, EPA examined a number of specific recycled materials, both within the control of the generator and transferred to a third party for recycling and decided that materials are to be considered solid wastes except in certain instances described in 40 CFR 241.3(b). These determinations were based on the record available to EPA. In order to better reflect the evidentiary record, EPA is proposing to amend the language of 40 CFR 241.3(a) to state that except for materials described in 241.3(b), and newly proposed section 241.4, combusted non-hazardous secondary materials are ''presumed'' to be solid wastes.

This petition process provides an opportunity under 40 CFR 241.3(c) for companies to show that their materials are not wastes. The petition process is essential because NHSMs are recycled and managed in many different ways and the Agency may lack the specific details in certain cases to know whether or not such NHSMs are or are not waste (76 FR 15472). We believe that the petition process provides an important assurance to the community on waste status and relevant standards and also provides an opportunity to demonstrate that the particular NHSM was not discarded. The Agency solicits comment on the petition process as it relates this approach, and on whether or not the regulatory text should also be changed to address this situation as it relates to the petition process where such NHSM has not in fact been discarded.

In evaluating whether to grant or deny the petition, the ultimate question that EPA will need to answer is whether or not the NHSM has been discarded. If the applicant is able to demonstrate that such NHSM has not been discarded, including meeting the legitimacy criteria, it is likely that the Agency will grant the petition. Under the existing regulations, until EPA acts on such petition, the NHSM is considered to be a solid waste. However, we would note that if the NHSM has not been discarded, EPA's grant of the petition would apply as of the date that the petition was submitted to the Agency. The Agency solicits comment on whether or not the regulatory text should also be changed to address this situation where such NHSM has not in fact been discarded.

Since promulgation of the 2011 NHSM final rule, concerns have been raised that the information required for a non-waste determination petition would be extensive and the timeframe for issuance of the decision lengthy. The Agency wishes to clarify that we do not intend that the application required or the petition process itself to be burdensome or time and resource intensive for the applicant.

As noted in the March 2011 final rule, the applicant must demonstrate that the NHSM that is to be burned as a fuel has not been discarded, is a legitimate product fuel (per § 241.3(d)(1)), considering the five criteria identified in § 241.3(c)(1)(i)–(v):

(1) Whether market participants treat the non-hazardous secondary material as a product rather than as a solid waste;

(2) Whether the chemical and physical identity of the non-hazardous secondary material is comparable to commercial fuels; [14]

[12] *See* ''Responses to Comments Document for the Identification of Non-Hazardous Secondary Materials that are Solid Waste (February 2011). A copy of this document can be found at *http://www.epa.gov/epawaste/nonhaz/define/index.htm*.

[13] May 13, 2011 Letter to Tim Hunt, American Forest and Paper Association. A copy of this letter has been placed in the docket for today's proposed rule.

[14] As discussed elsewhere in today's proposal, EPA is clarifying that in making comparisons between the NHSM and the traditional fuel, the owner or operator can consider individual

Continued

(3) Whether the non-hazardous secondary material will be used in a reasonable time frame given the state of the market;

(4) Whether the constituents in the non-hazardous secondary material are released to the air, water or land from the point of generation to the point just prior to combustion of the secondary material at levels comparable to what would otherwise be released from traditional fuels; and

(5) Other relevant factors.[15]

Overall, applicants, in many cases can utilize existing information already in hand (*e.g.,* laboratory analysis data or process knowledge) rather than develop additional information specifically for the non-waste determination petition. In addition, as noted in the previous footnote, there may already be a contractual or other written agreement between the generator of the NHSM and the combustion facility that burns such NHSM that lays out how this material is to be handled or used as a fuel that may indicate how the material would meet the legitimacy criteria that would be a relevant factor that EPA would consider in determining whether such NHSM is a non-waste fuel. As noted elsewhere in this preamble, EPA has collected contaminant data for various traditional fuels, which are available for use in meeting the contaminant legitimacy criterion as needed, to the extent that the applicant wants to utilize these data.[16] Potential applicants can include the generator of the NHSM, the facility that combusts the NHSM, an interested third party or a state agency (see FR 15530). Applications can also be submitted for a single combustor or a class of combustors, provided such combustion units are within the jurisdiction of the Regional Administrator. Useful information could also include a description of the nature of the relationship between the generator and the combustor, as well as a description of how the NHSM will be managed as it is transported off-site and after it arrives at the combustor. We believe this type of information should be readily available to potential applicants.

In addition, the EPA does not intend that the application review process itself be either time consuming or extensive. Rather, the Regional Administrator will evaluate the petition and issue a draft notice tentatively granting or denying the petition. Notification of the decision will be provided by local newspaper or radio. Public comment will be accepted for thirty days and a public hearing held upon request. A final decision will be issued after consideration of the comments as expeditiously as possible.

In summary, we do not envision that the information submitted in a petition for a non-waste determination would be more than is required for making a self-determination that a NHSM is a non-waste when burned within the control of the generator. However, because there are nearly 200,000 boilers and incinerators that can be used to burn such NHSMs, the EPA believes it is important that the Agency have the information necessary to ensure that the legitimacy criteria are met and that materials are not being discarded. The Agency requests comment on whether any other changes could be made to the non-waste determination petition process to streamline the process, while at the same time provide EPA with the opportunity to ensure that such NHSMs are not being discarded. For example, because the public has had the opportunity to comment on the basic criteria in determining whether the NHSM should be considered a non-waste fuel, we are seeking comment on whether the Agency should further streamline the process by not seeking public comment on each individual petition.

D. Rationale for the Proposed Revisions to the Part 241 Requirements

As noted above, the intent of this proposal is to identify certain specific aspects of the rule which EPA is reconsidering and on which it is soliciting public comment. The Agency is not reopening the entire rule for reconsideration and will not respond to comments directed toward rule provisions that are not specifically identified in this proposal. Thus, the Agency is not providing additional discussion of the background or rationale for the NHSM rule in general. For a detailed discussion of the NHSM final rule, see 76 FR 15532–15545. The EPA is proposing the revisions and clarifications discussed below.

1. Revised Definitions

In today's action, the EPA is proposing to revise several definitions codified in § 241.2, including the definitions of ''clean cellulosic biomass,'' ''contaminants,'' and ''established tire collection programs.''

a. Clean Cellulosic Biomass

In today's action, we are proposing to revise the definition of ''clean cellulosic biomass.'' In particular, following promulgation of the 2011 NHSM final rule, the Agency received additional information regarding other types of biomass not explicitly listed in the definition of clean cellulosic biomass codified in § 241.2, which persons believe also are clean cellulosic biomass. However, there was some confusion as to whether the definition included these materials. For example, questions arose whether the EPA would consider orchard trees, vines and hulls, to be within the definition of clean cellulosic biomass (and, therefore, a traditional fuel) if the biomass material was not specifically listed within the regulatory definition. Consequently, we are proposing to revise the definition of ''clean cellulosic biomass'' in two ways: (1) to clarify that the list of biomass materials are examples within the definition and is not intended to be an exhaustive list, and (2) to provide a more comprehensive list of clean cellulosic biomass to guide the regulated community.

Specifically, we are proposing to make the following revisions and additions to the definition: (1) Explicitly acknowledge that the list of biomass materials is not exclusive by adding the phrase, ''including, but not limited to''; (2) revise the category ''forest-derived biomass'' to include ''agricultural biomass''; (3) add hogged fuel, wood pellets, and untreated wood pallets as examples of forest-derived biomass; (4) add the category of ''urban wood'' and provide examples, including tree trimmings, stumps, and related forest-derived biomass from urban settings (note that ''urban wood'' is limited to forest-derived biomass from urban settings and does not include construction and demolition materials. Certain construction and demolition materials are included as a separate type of biomass within the definition of ''clean cellulosic biomass''); (5) add more examples of types of crop residues (vines, orchard trees, hulls, seeds spent grains, cotton byproducts, corn and peanut production residues, rice milling and grain elevator operation residues); and (6) revise the category of ''other biomass crops used specifically for

constituents or grouping of constituents. See section II.D.2 of this preamble for further discussion.

[15] The Agency included this criterion to allow the applicant to make additional arguments that such NHSMs are a non-waste fuel. For example, if there is a contractual or other written agreement between the generator of the NHSM and the facility that combusts the NHSM that lays out how this material is to be handled or used as a fuel that may indicate how the material would meet the legitimacy criteria, this would be a relevant factor that EPA would consider in determining whether such NHSM is a non-waste fuel.

[16] EPA's contaminant data are provided at the Web site for the NHSM rule at *http://www.epa.gov/epawaste/nonhaz/define/index.htm.* However, as we have noted elsewhere, the applicant can rely on other data that they may have or become aware of.

energy production'' to read as ''other biomass crops used specifically for the production of cellulosic biofuels'' and include ''byproducts of ethanol natural fermentation processes'' as an example of this type of biomass.

These proposed revisions and additional examples more clearly recognize and describe the various categories of biomass materials that we consider to be within the definition of ''clean cellulosic biomass'' and, therefore, within the definition of traditional fuels. We believe that these additional examples clearly meet the definition of clean cellulosic biomass, in that they will not contain contaminants at concentrations not normally associated with virgin biomass materials. In fact, many of the examples being added in today's proposal are themselves virgin materials (*e.g.,* tree trimmings, stumps, orchard trees, *etc.*). We believe that providing these additional examples within the definition of clean cellulosic biomass is consistent with the intent of the 2011 NHSM final rule. Further, we believe that such revisions make it more clear that the types of biomass materials the Agency would consider to be within the definition of clean cellulosic biomass (and a traditional fuel) are not limited to those explicitly listed in the definition, as we believe that it would be impractical if not impossible to capture all types of biomass materials that can be used as fuels within this single definition.

Thus, in today's proposed rule, the EPA is proposing to revise the definition of ''clean cellulosic biomass'' as follows: ''*Clean cellulosic biomass* means those residuals that are akin to traditional cellulosic biomass, including, but not limited to: agricultural and forest-derived biomass (*e.g.,* green wood, forest thinnings, clean and unadulterated bark, sawdust, trim, tree harvesting residuals from logging and sawmill materials, hogged fuel, wood pellets, untreated wood pallets); urban wood (*e.g.,* tree trimmings, stumps, and related forest-derived biomass from urban settings); corn stover and other biomass crops used specifically for the production of cellulosic biofuels (*e.g.,* energy cane, other fast growing grasses, byproducts of ethanol natural fermentation processes); bagasse and other crop residues (*e.g.,* peanut shells, vines, orchard trees, hulls, seeds, spent grains, cotton byproducts, corn and peanut production residues, rice milling and grain elevator operation residues); wood collected from forest fire clearance activities, trees and clean wood found in disaster debris, clean biomass from land clearing operations, and clean construction and demolition wood. These fuels are not secondary materials or solid wastes unless discarded. Clean biomass is biomass that does not contain contaminants at concentrations not normally associated with virgin biomass materials.''

b. Contaminants

In today's action, we are proposing a number of changes to the definition of ''contaminants'' in an effort to clarify what constituents are subject to the contaminant legitimacy criterion. The proposed definition is as follows: ''Contaminants means all pollutants listed in Clean Air Act sections 112(b) and 129(a)(4), with modifications outlined in this definition to reflect constituents found in non-hazardous secondary materials prior to combustion. The definition includes the following elemental contaminants that commonly form Clean Air Act section 112(b) and 129(a)(4) pollutants: antimony, arsenic, beryllium, cadmium, chlorine, chromium, cobalt, fluorine, lead, manganese, mercury, nickel, nitrogen, selenium, and sulfur. The definition does not include the following Clean Air Act section 112(b) and 129(a)(4) pollutants that are either unlikely to be found in non-hazardous secondary materials prior to combustion or are adequately measured by other parts of this definition: hydrogen chloride (HCl), chlorine gas (Cl_2), hydrogen fluoride (HF), nitrogen oxides (NO_X), sulfur dioxide (SO_2), fine mineral fibers, particulate matter, coke oven emissions, diazomethane, white phosphorus, titanium tetrachloride, m-cresol, o-cresol, p-cresol, m-xylene, o-xylene, and p-xylene.''

Before discussing these changes, we first want to note that the 2011 NHSM final rule and today's proposed rule identify the same three ways a chemical can be labeled a contaminant. First, it may be one of the 187 HAP currently listed in CAA section 112(b); second, it may be one of the nine pollutants listed under CAA section 129(a)(4); and third, it may be one of a handful of chemicals whose combustion will result in the formation of listed CAA section 112(b) and section 129(a)(4) pollutants (*e.g.,* sulfur that will result in SO_2). Today's proposed definition provides clarification by listing the constituents that belong to the third group.[17] Specifically, several pollutants listed in CAA section 112(b) and section 129(a)(4) form during combustion, so elemental precursors to those pollutants that are found in the NHSM prior to combustion are being added to the contaminant definition in place of the pollutants themselves. For example, when present in a NHSM undergoing combustion, chlorine readily forms HCl, fluorine readily forms HF, nitrogen readily forms NO_X, and sulfur readily forms SO_2. Because forms of these four elements found in materials prior to combustion are not directly identified as CAA air pollutants, yet the forms they take due to combustion are directly identified as CAA air pollutants, we believe it would be less confusing to include these elements in the ''contaminants'' definition.

Also, we are proposing to exclude from the definition of contaminants those pollutants in the CAA sections 112(b) and 129(a)(4) lists that we do not expect to find in any NHSM. Specifically:

- Hydrogen chloride, Cl_2, HF, NO_X, and SO_2 are identified as CAA list pollutants that are excluded from the definition since they are unlikely to be found in NHSM prior to combustion and have been replaced by the elements chlorine, fluorine, nitrogen and sulfur as discussed above;[18]
- Fine mineral fibers are excluded because they are releases from the manufacturing and processing (not combustion) of non-combustible rock, glass, or slag into mineral fibers;
- Particulate matter and coke oven emissions are excluded because they are products of combustion unlikely to exist in NHSM prior to combustion;
- Cresol isomers m-cresol, o-cresol and p-cresol are excluded because the listed pollutant cresols/cresylic acid includes these three isomers;
- Xylene isomers m-xylene, o-xylene and p-xylene are excluded because the listed pollutant xylenes includes these three isomers; and
- Diazomethane, white phosphorus and titanium tetrachloride are excluded because their high reactivity makes their presence in NHSMs very unlikely.

In addition, two phrases present in the 2011 NHSM final rule ''contaminants'' definition are not present in today's proposed definition. First, the phrase concerning constituents ''that will result in emissions of air pollutants'' has been

[17] Eleven metal elements directly identified in CAA section 112(b) are listed in the definition to provide the regulated community with a complete list of elements that are considered ''contaminants'' under the rule.

[18] Carbon monoxide (CO) is unlikely to be found in solid or liquid NHSMs, and EPA expects that combustors can use process knowledge to justify not testing for CO in these cases. CO remains in the contaminants definition, however, because no clear surrogate exists to replace it—neither the 2011 NHSM final rule nor today's proposed rule considers the elements carbon and oxygen to be contaminants.

removed since the regulated community appears to be confused that in determining whether or not a NHSM meets the ''contaminant legitimacy criterion,'' emissions from the combustion unit were to be considered in making the evaluation. The EPA disagrees and directs readers to the language in sections 241.3(d)(1)(iii) and 241.3(d)(2)(iv), which clearly states that the contaminant comparisons are based on the presence of contaminants in the NHSM that enters the combustion unit.

Second, the phrase ''including those constituents that could generate products of incomplete combustion,'' also referred to as PICs, has been removed because it is duplicative and potentially misleading. Specifically, this phrase has been removed because all PICs that the Agency considers air pollutants—including dioxins, dibenzofurans, PCBs, and PAHs—are already listed in CAA sections 112(b) or 129(a)(4) and are thus included in the ''contaminants'' definition. More importantly, it is potentially misleading because PIC formation depends heavily on combustion conditions, such as air/fuel ratio and mixing. These conditions are controlled to limit emissions, and neither these conditions nor emissions are the subject of this rule. The NHSM itself, and what it contains prior to combustion, is the subject of this rule. Thus, both changes clarify—but do not alter—the constituents subject to the contaminant legitimacy criterion.

c. Established Tire Collection Programs

Under the 2011 NHSM final rule, whole scrap tires (that are removed from vehicles) had to be managed under an ''established tire collection program'' in addition to meeting other criteria in order to be considered a non-waste fuel. The 2011 NHSM final rule defined ''established tire collection program'' as meaning ''a comprehensive collection system that ensures scrap tires are not discarded and are handled as valuable commodities in accordance with section 241.3(b)(2)(i) from the point of removal from the vehicle through arrival at the combustion facility'' (codified in 40 CFR 241.2).

However, this definition does not directly account for ''factory scrap'' tires or ''off-specification'' tires that are contractually arranged to be collected, managed and transported between a tire manufacturer (including retailers and other parties involved in the distribution and sale of new tires) and a combustor—a fact pattern the Agency views as being within the intent of the regulatory definition of ''established tire collection program'' because the tires are not discarded. Thus, the Agency is proposing to define ''established tire collection program'' to mean ''a comprehensive collection system or contractual arrangement that ensures scrap tires are not discarded and are handled as valuable commodities from the point of removal from the vehicle or the point at which they are generated at a tire manufacturer (including retailers or other parties involved in the distribution and sale of new tires) through arrival at the combustion facility.'' The Agency did not include the provisions for the ''factory scrap'' or ''off-specification'' tires in the 2011 NHSM final rule since information or comments were not provided to the EPA during the rulemaking process and thus, the Agency was not aware of the issue. The Agency did not receive comments about factory scrap or off-specification tires on the ANPRM or the proposed rule. Following promulgation of the 2011 NHSM final rule, the EPA learned that off-specification tires (including factory scrap tires), which include whole tires and tire components that do not meet manufacturer specifications, are collected at tire manufacturing facilities or manufacturer's downstream distribution channels—retailers and other parties involved in the distribution and sale of new tires. As noted in the revised definition, we interpret the term ''tire manufacturers'' broadly to include retailers and other parties that are involved in the distribution and sale of new tires, as we believe that these parties also manage tires as valuable commodities, such that discard is not occurring when these tires are transferred to a combustor.

If at any point in the process, a tire component or whole tire is not suitable for use as a vehicle tire, it is separated from the other tire components (or whole tires) and is stored in a protected environment in order to accumulate a sufficient quantity for shipment. The management of these tires is tightly controlled. Proprietary information could be collected by competitors by analyzing the factory scrap tire components, particularly from the uncured components (not yet vulcanized through heat and pressure), so the tires are stored in a safe manner, in part, to prevent theft.[19] Thus, we believe that factory scrap and off-specification tires are handled in the same protective manner as those that qualified to be managed under the oversight of established tire collection programs as described in the 2011 NHSM final rule.

The tire manufacturers, as well as the manufacturers' downstream distribution channels, that are included in the definition of ''established tire collection programs'' (1) have contractual arrangements with combustors, typically cement kilns (due to the high heating value and beneficial contribution to the cement production), to take and use their tires as fuels; or (2) are covered under the oversight of other collection programs that qualify under established tire collection programs (*i.e.,* oversight of state tire programs).

As discussed in the 2011 NHSM final rule, the intent of the requirement for ''removal from the vehicle'' was to distinguish these tires from those that were previously abandoned, and thus discarded. The changes to the definition in this proposed rule align the codified definition of established tire collection programs with the intent of the definition. We also note that we are proposing to delete the reference to section 241.3(b)(2)(i) that was included in the previous definition of established tire collection programs, since the citation is no longer accurate based on other revisions being proposed today (*e.g.,* see the discussion regarding scrap tires managed pursuant to established tire collection programs in section II.D.3). Refer to the 2011 NHSM final rule for more background and information regarding the characterization of ''established tire collection programs.''[20]

2. Revisions to the Contaminant Legitimacy Criterion for NHSM Used as Fuels

Several changes are being proposed in today's rule to the contaminant legitimacy criterion for NHSM used as fuel. These proposed changes to the wording in § 241.3(d)(1)(iii) emphasize the flexibility that is already embodied in the 2011 NHSM final rule. First, today's proposal replaces ''contaminants'' with the phrase ''contaminants or groups of contaminants'' to clarify that the regulatory definition allows groups of contaminants to be evaluated, where appropriate, in determining whether a NHSM meets the contaminant legitimacy criterion. Second, today's proposal codifies language from the preamble of the 2011 NHSM final rule stating that the ''designed to burn'' concept includes traditional fuels that can be burned or are burned in a particular unit, whether or not the unit is permitted to burn that traditional fuel.

[19] Personal communication from Tracey Norberg to EPA, September 13, 2011. A copy of this communication has been placed in the docket in today's rule.

[20] See 76 FR 15490–15499 and 15534–15535.

In addition, the proposed regulations include text confirming that contaminant comparisons may use ranges from national surveys of traditional fuel data. Neither the 2011 NHSM final rule nor today's proposed rule requires persons to compare contaminants in their NHSM to contaminants in the specific traditional fuel source they burn (or would otherwise burn). As an example, persons who would otherwise burn coal may use any as-burned coal available in coal markets in making a comparison between the contaminants in their NHSM and the contaminants in coal—they are not limited to coal from a specific coal supplier they have used in the past or currently use. Regulatory text confirming this flexibility is only included in today's proposed regulations to clarify what is inherent in the 2011 NHSM final rule.

Two other issues have arisen during implementation of the 2011 NHSM final rule that, while not leading to specific regulatory changes in today's proposal, still merit discussion. The first issue is that contaminant legitimacy criterion determinations do not require testing contaminant levels, in either the NHSM or an appropriate traditional fuel. Persons can use expert or process knowledge to justify decisions to rule out certain constituents. The second issue is that persons may use data from a group of similar traditional fuels for contaminant comparisons, provided the unit could burn each traditional fuel. This idea grows from the ''designed to burn'' concept explained in the 2011 NHSM final rule and codified in today's proposal, as it allows a person with a unit that can or does burn similar traditional fuels (*e.g.,* anthracite, lignite, bituminous, and sub-bituminous coal) to group those traditional fuels when making contaminant comparisons. See section II.D.2.b for more discussion of this rationale.

a. What are the contaminants?

While persons may satisfy the contaminant legitimacy criterion on a contaminant-by-contaminant basis, comparing groups of contaminants in the NHSM to similar groups in traditional fuels could also be appropriate, provided the grouped contaminants share physical and chemical properties that influence behavior in the combustion unit prior to the point where emissions occur. Volatility, the presence of specific elements, and compound structure are three such properties. One approach to grouping contaminants, as shown in Tables 7 and 8 below, could include TOX, nitrogenated compounds, VOC, SVOC, D/F, PCB, PAH, and radionuclides. Persons may consider other groupings that they can show are technically reasonable.

Grouping of contaminants is a standard practice often employed by the Agency as it develops regulations. In fact, the monitoring standards included in the CAA sections 112 and 129 regulations also utilize the grouping concept and they apply to the same combustion units impacted by the NHSM rule (*i.e.,* industrial, commercial and institutional boilers and process heaters and CISWI units). For example,

- Volatile hydrocarbons and semi-volatile hydrocarbons can both be expected to result from incomplete combustion; therefore, the emission standards promulgated under the CAA regulations are grouped into one category: CO.[21]
- Halogenated organics are expected to contribute to emissions of dioxin and acid gases (HCl and HF); therefore, the emission standards promulgated under the CAA are grouped into two categories: D/F and HCl.[22]
- Nitrogenated compounds are expected to contribute to emissions of NO_X; therefore, the emission standards promulgated under the CAA are grouped into one category: NO_X.[23]

A look at Tables 7 and 8 below also reveals that a number of the seemingly ''individual'' pollutants listed in sections 112 and 129 of the CAA are actually classes of structurally-related compounds (*e.g.,* PCBs, POM, D/F, cyanide compounds, cresols, glycol ethers, radionuclides, xylenes, antimony compounds, arsenic compounds, beryllium compounds, Cd compounds, *etc.*).

If persons choose to group contaminants, analytical methods for the NHSM and traditional fuel should account for the same list of compounds to the extent possible. Persons may be able to exclude some members of a particular contaminant group from testing based on process knowledge, but methods for testing the group as a whole should generally account for all other members of the contaminant group.

Some data sources may define contaminant groups more broadly than this rule, thus resulting in a definition for a particular group that includes compounds not considered contaminants under the rule. Such data sources may be all that is available in the literature in some cases, but they may still be appropriate. Total VOC and total SVOC analyses offer an instructive example because, depending on the test used and the material analyzed, such analyses may include concentrations of methane, acetone, or other compounds not considered contaminants under the NHSM final rule. Several solutions exist to make the results meaningful, however. One approach would be to specifically subtract compounds like methane that are not considered contaminants under the rule and are expected to boost a total group count in traditional fuels. Another approach would be to measure each applicable compound individually and add the totals.

The tables presented below would separate the list of potential contaminants into the 15 elements listed in today's proposed definition of ''contaminants'' and the 163 compounds or groups of compounds inferred from that definition by their inclusion on the CAA sections 112 or 129 lists. The elements listed in Table 7 are considered contaminants because they commonly form air pollutants listed on either the CAA section 112 HAP list, the CAA section 129 list, or both lists. The compounds or groups of compounds listed in Table 8 are considered contaminants because they are directly on either the CAA section 112 HAP list, the CAA section 129 list, or both lists.[24] [25] The Agency wants to make clear that persons can use other approaches that they can show are technically reasonable, whether it is on a contaminant-by-contaminant basis or involves grouping contaminants. The Agency is only offering these tables to provide the regulated community with one reasonable approach for how a grouping of contaminants could be implemented.

[21] Area Source Boilers NESHAP, Major Source Boilers NESHAP, and Commercial and Industrial Solid Waste Incinerators NESHAP.

[22] Major Source Boilers NESHAP and Commercial and Industrial Solid Waste Incinerators NESHAP.

[23] Commercial and Industrial Solid Waste Incinerators NESHAP.

[24] Clean Air Act section 112(b). See *http://www.epa.gov/ttn/atw/pollutants/atwsmod.html* for modifications to the original list of Hazardous Air Pollutants.

[25] Clean Air Act section 129(a)(4). See *http://www.epa.gov/ttnatw01/129/sec129.pdf.*

TABLE 7—ELEMENTS CONSIDERED CONTAMINANTS—WITH EXPLANATION

1. Antimony (Sb)	Antimony compounds are a CAA section 112 HAP.
2. Arsenic (As)	Arsenic compounds are a CAA section 112 HAP.
3. Beryllium (Be)	Beryllium compounds are a CAA section 112 HAP.
4. Cadmium (Cd)	Cadmium compounds are a CAA section 112 HAP.
5. Chlorine (Cl)	Hydrogen chloride/hydrochloric acid is on the CAA HAP & 129 lists.
6. Chromium (Cr)	Chromium compounds are a CAA section 112 HAP.
7. Cobalt (Co)	Cobalt compounds are a CAA section 112 HAP.
8. Fluorine (F)	Hydrogen fluoride/hydrofluoric acid is a CAA section 112 HAP.
9. Lead (Pb)	Lead compounds are a CAA section 112 HAP.
10. Manganese (Mn)	Manganese compounds are a CAA section 112 HAP.
11. Mercury (Hg)	Mercury compounds are a CAA section 112 HAP.
12. Nickel (Ni)	Nickel compounds are a CAA section 112 HAP.
13. Nitrogen (N)	Nitrogen oxides (NO_X) are a CAA section 129 pollutant.
14. Selenium (Se)	Selenium compounds are a CAA section 112 HAP.
15. Sulfur (S)	Sulfur dioxide (SO_2) is a CAA section 129 pollutant.

TABLE 8—COMPOUNDS CONSIDERED CONTAMINANTS—WITH GROUP INFORMATION [26]

1	Acetaldehyde	VOC [27].			
2	Acetamide		SVOC [28]		Nitrogenated.
3	Acetonitrile (methyl cyanide)	VOC			Nitrogenated.
4	Acetophenone	VOC.			
5	2-Acetylaminofluorene				Nitrogenated.
6	Acrolein	VOC.			
7	Acrylamide	VOC			Nitrogenated.
8	Acrylic acid	VOC.			
9	Acrylonitrile	VOC			Nitrogenated.
10	Allyl chloride	VOC		Org. Halogen [29].	
11	4-Aminobiphenyl		SVOC		Nitrogenated.
12	Aniline	VOC			Nitrogenated.
13	o-Anisidine		SVOC		Nitrogenated.
14	Asbestos				
15	Benzene	VOC			
16	Benzidine		SVOC		Nitrogenated.
17	Benzotrichloride		SVOC	Org. Halogen.	
18	Benzyl chloride	VOC		Org. Halogen.	
19	Biphenyl		SVOC.		
20	Bis (2-ethylhexyl) phthalate (DEHP)		SVOC.		
21	Bis (chloromethyl) ether	VOC		Org. Halogen.	
22	Bromoform	VOC		Org. Halogen.	
23	1,3-Butadiene	VOC			
24	Calcium cyanamide				Nitrogenated.
25	Captan		SVOC	Org. Halogen	Nitrogenated.
26	Carbaryl		SVOC		Nitrogenated.
27	Carbon disulfide	VOC.			
28	Carbon monoxide				
29	Carbon tetrachloride	VOC		Org. Halogen.	
30	Carbonyl sulfide	VOC.			
31	Catechol	VOC.			
32	Chloramben		SVOC	Org. Halogen	Nitrogenated.
33	Chlordane		SVOC	Org. Halogen.	
34	Chloroacetic acid	VOC		Org. Halogen.	
35	2-Chloroacetophenone		SVOC	Org. Halogen.	
36	Chlorobenzene	VOC		Org. Halogen.	
37	Chlorobenzilate		SVOC	Org. Halogen.	
38	Chloroform	VOC		Org. Halogen.	
39	Chloromethyl methyl ether	VOC		Org. Halogen.	
40	Chloroprene	VOC		Org. Halogen.	
41	* Cresols/Cresylic acid [30]	VOC.			
42	Cumene	VOC.			
43	* Cyanide compounds [31]				Nitrogenated.
44	2, 4-D, salts and esters		SVOC	Org. Halogen.	
45	DDE		SVOC	Org. Halogen.	
46	* Dibenzofurans [32]	Consider Dioxins & Furans as a Distinct Group.			
47	1, 2-Dibromo-3-chloropropane	VOC		Org. Halogen.	
48	Dibutylphthalate		SVOC.		
49	1, 4-Dichlorobenzene(p)	VOC		Org. Halogen.	
50	3, 3-Dichlorobenzidene		SVOC	Org. Halogen	Nitrogenated.
51	Dichloroethyl ether (bis (2-chloroethyl) ether)	VOC		Org. Halogen.	
52	1, 3-Dichloropropene	VOC		Org. Halogen.	

TABLE 8—COMPOUNDS CONSIDERED CONTAMINANTS—WITH GROUP INFORMATION [26]—Continued

53	Dichlorvos		SVOC	Org. Halogen.	
54	Diethanolamine		SVOC		Nitrogenated.
55	Diethyl sulfate	VOC.			
56	3, 3-Dimethoxybenzidine				Nitrogenated.
57	Dimethyl aminoazobenzene				Nitrogenated.
58	N, N-Dimethylaniline	VOC			Nitrogenated.
59	3, 3'-Dimethyl benzidine		SVOC		Nitrogenated.
60	Dimethyl carbamoyl chloride	VOC		Org. Halogen	Nitrogenated.
61	Dimethyl formamide	VOC			Nitrogenated.
62	1, 1-Dimethyl hydrazine	VOC			Nitrogenated.
63	Dimethyl phthalate		SVOC.		
64	Dimethyl sulfate	VOC.			
65	4, 6-Dinitro-o-cresol, and salts		SVOC		Nitrogenated.
66	2, 4-Dinitrophenol		SVOC		Nitrogenated.
67	2, 4-Dinitrotoluene		SVOC		Nitrogenated.
68	1, 4-Dioxane (1, 4-diethyleneoxide)	VOC.			
69	1, 2-Diphenylhydrazine		SVOC		Nitrogenated.
70	Epichlorohydrin (1-chloro-2,3-epoxypropane)	VOC		Org. Halogen.	
71	1, 2-Epoxybutane	VOC.			
72	Ethyl acrylate	VOC.			
73	Ethyl benzene	VOC.			
74	Ethyl carbamate (urethane)	VOC			Nitrogenated.
75	Ethyl chloride (chloroethane)	VOC		Org. Halogen.	
76	Ethylene dibromide (dibromoethane)	VOC		Org. Halogen..	
77	Ethylene dichloride (1, 2-Dichloroethane)	VOC		Org. Halogen..	
78	Ethylene glycol		SVOC.		
79	Ethylene imine (aziridine)	VOC			Nitrogenated.
80	Ethylene oxide	VOC.			
81	Ethylene thiourea		SVOC		Nitrogenated.
82	Ethylidene dichloride (1, 1-Dichloroethane)	VOC		Org. Halogen..	
83	Formaldehyde	VOC.			
84	* Glycol ethers [33]		SVOC.		
85	Heptachlor		SVOC	Org. Halogen..	
86	Hexachlorobenzene		SVOC	Org. Halogen..	
87	Hexachlorobutadiene	VOC		Org. Halogen..	
88	Hexachlorocyclopentadiene (HCCPD)		SVOC	Org. Halogen..	
89	Hexachloroethane	VOC		Org. Halogen..	
90	Hexamethylene-1, 6-diisocyanate		SVOC		Nitrogenated.
91	Hexamethylphosphoramide		SVOC		Nitrogenated.
92	Hexane	VOC..			
93	Hydrazine				Nitrogenated.
94	Hydroquinone		SVOC.		
95	Isophorone	VOC..			
96	Lindane (all isomers)		SVOC	Org. Halogen..	
97	Maleic anhydride		SVOC.		
98	Methanol	VOC.			
99	Methoxychlor		SVOC	Org. Halogen..	
100	Methyl bromide (bromomethane)	VOC		Org. Halogen..	
101	Methyl chloride (chloromethane)	VOC		Org. Halogen..	
102	Methyl chloroform (1, 1, 1-trichloroethane)	VOC		Org. Halogen..	
103	Methyl hydrazine	VOC			Nitrogenated.
104	Methyl iodide (Iodomethane)	VOC		Org. Halogen..	
105	Methyl isobutyl ketone	VOC.			
106	Methyl isocyanate	VOC			Nitrogenated.
107	Methyl methacrylate	VOC.			
108	Methyl tert butyl ether (MTBE)	VOC.			
109	4, 4-Methylene bis (2-chloroaniline)			Org. Halogen	Nitrogenated.
110	Methylene chloride (dichloromethane)	VOC		Org. Halogen..	
111	4, 4'-Methylenedianiline				Nitrogenated.
112	Methylene diphenyl diisocyanate (MDI)		SVOC		Nitrogenated.
113	Naphthalene		SVOC.		
114	Nitrobenzene	VOC			Nitrogenated.
115	4-Nitrobiphenyl		SVOC		Nitrogenated.
116	4-Nitrophenol		SVOC		Nitrogenated.
117	2-Nitropropane	VOC			Nitrogenated.
118	N-Nitrosodimethylamine (NDMA)	VOC			Nitrogenated.
119	N-Nitroso-N-methylurea	VOC			Nitrogenated.
120	N-Nitrosomorpholine	VOC			Nitrogenated.
121	Parathion		SVOC		Nitrogenated.
122	Pentachloronitrobenzene (Quintobenzene)		SVOC	Org. Halogen	Nitrogenated.
123	Pentachlorophenol		SVOC	Org. Halogen.	
124	Phenol	VOC.			
125	p-Phenylenediamine		SVOC		Nitrogenated.
126	Phosgene	VOC		Org. Halogen.	

TABLE 8—COMPOUNDS CONSIDERED CONTAMINANTS—WITH GROUP INFORMATION [26]—Continued

127	Phosphine				
128	Phthalic anhydride		SVOC		
129	* Polychlorinated biphenyls (PCBs) [34]	Consider PCBs as a Distinct Group.			
130	* Polycyclic Organic Matter (or Total PAH) [35]	Consider Total PAH as a Distinct Group			
131	1, 3-Propane sultone	VOC.			
132	β-Propiolactone	VOC.			
133	Propionaldehyde	VOC.			
134	Propoxur (Baygon)		SVOC		Nitrogenated.
135	Propylene dichloride (1, 2-dichloropropane)	VOC		Org. Halogen.	
136	Propylene oxide	VOC.			
137	1, 2-Propylenimine (2-methyl aziridine)	VOC			Nitrogenated.
138	Quinoline		SVOC		Nitrogenated.
139	Quinone		SVOC.		
140	* Radionuclides (including radon).[36]				
141	Styrene	VOC.			
142	Styrene oxide	VOC.			
143	* 2, 3, 7, 8-Tetrachlorodibenzo-p-dioxin & other dioxins [37]	Consider Dioxins/Furans as a Distinct Group.			
144	1, 2, 2, 2-Tetrachloroethane	VOC		Org. Halogen.	
145	Tetrachloroethylene (perchloroethylene)	VOC		Org. Halogen.	
146	Toluene	VOC.			
147	2, 4-Toluene diamine		SVOC		Nitrogenated.
148	2, 4-Toluene diisocyanate		SVOC		Nitrogenated.
149	o-Toluidine		SVOC		Nitrogenated.
150	Toxaphene (chlorinated camphenes)		SVOC	Org. Halogen.	
151	1, 2, 4-Trichlorobenzene	VOC		Org. Halogen.	
152	1, 1, 2-Trichloroethane	VOC		Org. Halogen.	
153	Trichloroethylene (TCE)	VOC		Org. Halogen.	
154	2, 4, 5-Trichlorophenol		SVOC	Org. Halogen.	
155	2, 4, 6-Trichlorophenol		SVOC	Org. Halogen.	
156	Triethylamine	VOC			Nitrogenated.
157	Trifluralin		SVOC	Org. Halogen	Nitrogenated.
158	2, 2, 4-Trimethylpentane	VOC.			
159	Vinyl acetate	VOC.			
160	Vinyl bromide	VOC		Org. Halogen.	
161	Vinyl chloride	VOC		Org. Halogen.	
162	Vinylidene chloride (1, 1-dichloroethylene)	VOC		Org. Halogen.	
163	* Xylenes [38]	VOC.			

Tables 7 and 8 do not include the 17 compounds specifically removed from the proposed regulatory definition of contaminants in § 241.2. As discussed in section II.D.1., HCl, Cl_2, HF), NO_X, and SO_2 are excluded from Table 8 and replaced by the elements chlorine, fluorine, nitrogen and sulfur in Table 7. This is necessary because of differences between NHSMs prior to combustion and the emissions that will result from that combustion. NHSMs prior to combustion are not expected to contain the CAA 112/129 pollutants HCl, Cl_2, HF, NO_X or SO_2, and measuring forms of their precursors (the elements chlorine, fluorine, nitrogen and sulfur) is the only way to account for these pollutants prior to combustion.

In addition, fine mineral fibers, PM, and coke oven emissions are excluded because they are unlikely to exist in NHSMs prior to combustion. Diazomethane, white phosphorus and titanium tetrachloride are also excluded because their reactivity makes their presence in NHSMs very unlikely.[39] Finally, the three cresol isomers are included in Table 8 under cresols/cresylic acid, itself a listed HAP; and similarly, the three xylene isomers are included in Table 8 under xylenes, also a listed HAP.

b. What does ''designed to burn'' mean?

To meet the contaminant legitimacy criterion, persons must compare contaminants in the NHSM they wish to burn to contaminants in the traditional fuel the unit is ''designed to burn.'' [40] Today's proposal codifies that data for any traditional fuel the unit can burn or does burn may be used for these comparisons, whether or not the unit's

[26] Spicer, Chester W. *et al.,* Hazardous Air Pollutant Handbook, Lewis, Boca Raton, FL, 2002, pg. 23–53.

[27] Volatile organic compounds (VOC) are identified here as organic compounds with a vapor pressure greater than 0.1 mm Hg at 25 °C.

[28] Semi-volatile organic compounds (SVOC) are identified here as organic compounds with a vapor pressure between 10^{-7} and 0.1 mm Hg at 25 °C.

[29] Organic halogens are identified here as any compound that contains both carbon and a halogen (chlorine, bromine, fluorine, or iodine).

[30] Cresols are a group that includes three compounds.

[31] Cyanide compounds are a group that includes hydrogen cyanide, propionitrile, cyanogens, and a number of possible particle phase compounds.

[32] Dibenzofurans are a group that includes 135 polychlorinated dibenzofurans (PCDFs).

[33] Glycol ethers are a group that includes roughly 30 compounds.

[34] PCBs are a group that includes 209 congeners.

[35] Polycyclic Organic Matter (POM) is a group that theoretically may include millions of compounds. Only 100 or so, however, have been identified and studied.

[36] Radionuclides are a group that includes uranium, radon, and radium isotopes.

[37] Dioxins are a group that includes 75 polychlorinated dibenzo dioxins (PCDDs).

[38] Xylenes are a group that includes three compounds.

[39] Spicer, Chester W. *et al.,* Hazardous Air Pollutant Handbook, Lewis, Boca Raton, FL, 2002, pp 11–21.

[40] As explained in Section II.D.2.a, today's proposed rule makes it clear that ''contaminants'' may be an individual contaminant or group of contaminants.

air permit lists the traditional fuel. The reason such comparisons to traditional fuel(s) are conducted is to assist in making a determination of whether or not the NHSM is being discarded, which makes differentiating between ''can burn'' and ''does burn'' irrelevant. Please note that for a unit to be able to burn a traditional fuel, it needs an appropriate feed mechanism (*e.g.,* a way to load solid fuel of a particular size into the unit). The unit would also need the ability to adjust physical parameters to ensure spatial mixing and flame stability per unit specifications.

Traditional fuels are defined in § 241.2 as follows: ''*Traditional fuels* means materials that are produced as fuels and are unused products that have not been discarded and therefore, are not solid wastes, including: (1) fuels that have been historically managed as valuable fuel products rather than being managed as waste materials, including fossil fuels (*e.g.,* coal, oil and natural gas), their derivatives (*e.g.,* petroleum coke, bituminous coke, coal tar oil, refinery gas, synthetic fuel, heavy recycle, asphalts, blast furnace gas, recovered gaseous butane, and coke oven gas) and cellulosic biomass (virgin wood); and (2) alternative fuels developed from virgin materials that can now be used as fuel products, including used oil which meets the specifications outlined in 40 CFR 279.11, currently mined coal refuse that previously had not been usable as coal, and clean cellulosic biomass. These fuels are not secondary materials or solid wastes unless discarded.''

Because most combustion units can burn different—but related—traditional fuels, broad groups of similar traditional fuels may be used when comparing contaminants. The most common traditional fuel categories burned at major source boilers are coal, wood, oil and natural gas, as evidenced by data submitted to the EPA's OAQPS.[41] [42]

To further clarify the impact of the new proposed ''designed to burn'' language on contaminant comparisons, potential categories for coal, wood and oil are described below. A coal group could include data on anthracite, lignite, bituminous and sub-bituminous coal. A wood or biomass group could include data on unadulterated lumber, timber, bark, biomass and hogged fuel. An oil group could include data on fuel oils 1–6, diesel fuel, kerosene and other petroleum based oils.[43] [44] In cases where a unit can burn traditional fuels from several categories, such as a boiler that can burn either coal or biomass, contaminant comparisons could be made using data from either fuel category at the combustor's discretion. In other words, if a facility burns biomass in its combustion unit, but that same combustion unit could also burn coal, the facility could compare its secondary material to either traditional fuel.

Some fossil fuel derivatives (*e.g.,* petroleum coke, coal tar oil) and alternative fuels (*e.g.,* clean cellulosic biomass) are defined as traditional fuels and, therefore, do not need to meet the legitimacy criteria to be burned. The EPA lacks sufficient contaminant data, however, to assist those wishing to compare NHSM to these traditional fuels. In addition, other units currently exist that burn only NHSMs. Both situations raise the question of what traditional fuel(s) to use for contaminant comparisons. In addition to being able to burn derivative fuels, alternative fuels, or NHSM, most combustion units can also burn other traditional fuel(s). In such cases, it is appropriate to make the comparison to one of the traditional fuel categories discussed above: either coal or wood for solids or oil for liquids. For example, if a combustion unit only burns a solid form of NHSM, the combustor could compare contaminants in the NHSM against either coal or wood in order to demonstrate compliance with the contaminant legitimacy criterion, provided the combustion unit is designed to burn such solid forms of fuel.

c. What contaminant comparisons are allowed?

Regardless of the specific methodology chosen, a comparison will have to be made for each contaminant or group of contaminants between a traditional fuel or group of traditional fuels and the NHSM. Generators or combustors can use either traditional fuel data collected by the EPA or their own data for traditional fuel comparison values.[45] Generators or combustors are responsible, however, for either providing NHSM comparison values in cases where testing is required or documenting why testing is unnecessary. Examples of acceptable NHSM data could include both laboratory test results from a specific generator or combustor and industry-recognized values provided by a national trade organization.

Given data for a particular traditional fuel, it makes intuitive sense to base the traditional fuel comparison value on the upper end of its statistical range. Anything less could result in ''traditional fuel'' samples being considered solid waste if burned in the very combustion units designed to burn them—not the Agency's intent in either the 2011 NHSM final rule or today's proposed rule.[46] Given that selection, acceptable NHSM comparison values would include the upper end of a statistical range, a calculation involving the mean and standard deviation, or perhaps a single data point in situations where data are limited. It would not be appropriate to compare an average NHSM contaminant value to the high end of a traditional fuel range, as the existence of an average implies multiple data points from which a more suitable statistic (*e.g.,* range or standard deviation) could have been calculated.

If each NHSM comparison value is comparable to or lower than its corresponding traditional fuel value, the material would be considered to meet the contaminant legitimacy criterion. An initial assessment would not generally need to be repeated, provided the facility continues to operate in the same manner and use the same type of NHSMs as when the original assessment was made.

We would finally note that despite presenting several approaches for calculating NHSM comparison values, such as the upper end of a statistical range or a calculation involving the mean and standard deviation, today's preamble discussion does not preclude other reasonable methodologies. In the context of an inspection or enforcement action, the Agency will evaluate the appropriateness of alternative methodologies and data sources on a case-by-case basis when determining

[41] EPA, Office of Air Quality Planning and Standards (OAQPS), Emissions Database for Boilers and Process Heaters Containing Stack Test, CEM & Fuel Analysis Data Reported Under ICR No. 2286.01 and ICR No. 2286.03 (Version 6). February 2011. *http://www.epa.gov/ttn/atw/boiler/boilerpg.html#TECH.*

[42] The fuel analysis information in this OAQPS database is one example of a ''national survey'' of traditional fuel information, as referenced in the proposed contaminant legitimacy criterion at § 241.3(d)(1)(iii).

[43] We do not believe that the oil group should include unrefined crude oil or gasoline, as neither is typically burned in combustion units subject to the CAA sections 112 or 129 standards.

[44] Used oil is a special case and does not need to undergo the contaminant comparison. If it meets the specifications in 40 CFR Part 279.11, it is a traditional fuel. If it does not meet the specifications (*i.e.,* it is ''off-spec'' oil), it is a solid waste under the 2011 NHSM final rule.

[45] The EPA has collected current information on levels of contaminants in traditional fuels, which can be found at *http://www.epa.gov/epawaste/nonhaz/define/index* and used by the regulated community as they so choose. The EPA will update this information as appropriate.

[46] Traditional fuels, as defined in § 241.2, are not required to meet the legitimacy criteria, and this scenario is only used to explain the logic behind basing a traditional fuel comparison value on the upper end of a statistical range.

whether the legitimacy criteria have been met.

Even when analytical testing is not necessary, combustors burning NHSM under CAA section 112 must document the basis of their determinations pertaining to the part 241 criteria (including the contaminant legitimacy criteria) in accordance with applicable air regulations. These regulations can be found in § 63.11225(c)(2)(ii) for area source boilers, in § 63.7555(d)(2) for major source boilers, and in § 60.2175(v) and § 60.2740(u) for incinerators.

3. Categorical Determinations That Specific NHSM Are Not Solid Waste When Used as a Fuel

Issues were raised after promulgation of the 2011 NHSM final rule concerning application of the legitimacy criteria, and the extent of the information required to make demonstrations that a NHSM was not a solid waste. To provide additional clarity and assist in implementation of the rule, the Agency is proposing to codify in § 241.4 determinations that certain NHSMs are not solid wastes when used as a fuel, where the Agency has sufficient information and knowledge that these NHSMs are not wastes. The practical effect of these categorical listings is that persons that generate or burn these materials will not need to make individual determinations, as required under the existing rules, that these materials meet the legitimacy criteria. Except where noted, combustors of these materials will not be required to provide further information demonstrating their non-waste status.[47]

Thus, the Agency is proposing a list of secondary materials that are non-wastes when used as a fuel in a combustion unit, based on a balancing of the legitimacy criteria and other such relevant factors that the Administrator may identify. Such additional factors may include, but are not limited to, whether the NHSM's use as a fuel has been integrally tied to the industrial production process and the extent to which the NHSM is functionally the same as the comparable traditional fuel.

We note that a balancing approach to considering the legitimacy criteria along with other relevant factors is not included in the standards and procedures for making individual non-waste determinations under § 241.3. The Agency is not considering any change to the self-implementing, mandatory nature of the § 241.3 standards for individual facilities and will not respond to any comments on this topic.

Regarding the proposed categorical determinations in § 241.4, where a particular NHSM may not meet all the legitimacy criteria outlined in § 241.3(d)(1), it is necessary to require a formal determination in order to prevent sham recycling (*i.e.,* materials being discarded under the guise of recycling). The EPA has long acknowledged that, ''[w]ith respect to the issue of whether [an] activity is sham recycling, this question involves assessing the intent of the owner or operator by evaluating circumstantial evidence, always a difficult task.'' [48] In cases where the difference between recycling and treatment is difficult to distinguish, ''[t]he potential for abuse is such that great care must be used when making a determination that a particular activity is to go unregulated (*i.e.,* it is one of those activities which is beyond the scope of our jurisdiction).'' [49] However, the Agency also believes that there are cases where a secondary material may not fully meet the self-implementing legitimacy criteria, but upon consideration of other relevant factors, it can be determined that the material is a legitimate fuel and is not merely being discarded by being burned.

In addition to the proposed categorical determination that certain secondary materials are not wastes when combusted as a fuel, the Agency is proposing a rulemaking petition process for individuals to request categorical determinations for additional NHSM as not being a solid waste when burned as a fuel in combustion units. This process is outlined in section II.D.4.

The information and rationale that the Agency is relying upon to propose the section 241.4 categorical determinations for certain secondary materials is discussed below.

a. Scrap Tires

In the 2011 NHSM final rule, the EPA determined that scrap tires removed from vehicles and managed pursuant to established tire collection programs would not be considered a solid waste, provided they meet the legitimacy criteria in § 241.3(d)(1). The 2011 NHSM final rule preamble also concluded that, as a category, scrap tires managed pursuant to established tire collection programs would meet the legitimacy criteria for NHSMs used as fuels. Questions have arisen, however, as to whether persons must still demonstrate for each facility that this material meets the legitimacy criteria. To clarify this point, we are proposing to codify a categorical determination in today's rule to designate scrap tires that have not been discarded and are managed under the oversight of established tire collection programs (as defined in 241.2), including tires removed from vehicles and off-specification tires, are not solid wastes when used as fuels in combustion units. Thus, persons who generate and/or burn such scrap tires would not need to make an individual legitimacy determination that such scrap tires are non-waste fuels.

As discussed in section II.D.1 of today's action, the term ''established tire collection program'' is proposed to encompass off-specification tires (including factory scrap tires) that are contractually arranged to be collected, managed and transported between a tire manufacturer, including retailers or other parties involved in the distribution and sale of new tires, and a combustor. Thus, under the proposal, ''established tire collection program'' means ''a comprehensive collection system or contractual arrangement that ensures scrap tires are not discarded and are handled as valuable commodities through arrival at the combustion facility.'' The established tire collection programs ensure the tires are not discarded. The rationale for the related edits to the definition of established tire collection programs are described in the section II.D.1.

As discussed in the 2011 NHSM final rule, scrap tires from vehicles meet the legitimacy criteria (§ 241.3(d)(1)) for being handled as a valuable commodity, for having meaningful heating value, and for comparable contaminants.[50] Specifically, scrap tires are considered to be handled as a valuable commodity when they are collected under established tire collection programs. Because scrap tires have an exceptionally high heating value (12,000 Btu/lb to 16,000 Btu/lb), they are considered to meet the legitimacy criteria for meaningful heating value. In fact, the heating value of scrap tires is higher than typical coal values and other solid fuels.[51] In developing the

[47] In the 2011 NHSM final rule, scrap tires managed under established tire collection programs and resinated wood were designated as non-wastes when used both within and outside generator control (see § 241.3(b)(2). The final rule indicated that the Agency would solicit comment in the future on additional non-hazardous secondary materials that can be used as a non-waste fuel both by the generator and outside the control of the generator (76 FR 15472).

[48] See April 26, 1989 Memorandum from Sylvia K. Lowrance, Director, Office of Solid Waste to Hazardous Waste Management Division Directors, Regions I–X. A copy of this document has been placed in the docket for today's rulemaking.

[49] *Id.*

[50] 76 FR at 15535.

[51] ASTM Standard D6700–01, 2006, ''Standard Practice for Use of Scrap Tire-Derived Fuel,'' ASTM International, West Conshohocken, PA, 2003, DOI: 10.1520/C0033–03, *http://www.astm.org.*

2011 NHSM final rule, the EPA analyzed contaminant concentrations in scrap tires and determined that contaminant levels were comparable to or lower than levels in traditional fuels; therefore, scrap tires are considered to meet the legitimacy criterion for comparable contaminants.[52]

The term ''scrap tire'' is a general term for tires and can include, for example, whole tires, chipped tires, off-specification tires, or off-specification tire components (*i.e.,* tread, sidewall or base) that are removed from vehicles or are generated by tire manufacturers, including retailers or other parties involved in the distribution and sale of new tires; it does not include whole tires that have been discarded and burned directly without processing as a fuel. The provision in § 241.4 specifically references only those scrap tires that have not been discarded and are managed under the oversight of established tire collection programs, including tires removed from vehicles and off-specification tires. Thus, the regulatory text has been revised to make this point clear.

b. Resinated Wood[53]

The EPA is proposing to designate resinated wood as not being a solid waste when used as a fuel. This determination was previously codified under § 241.3 (b)(2)(ii) of the NHSM final rule, provided the resinated wood met the legitimacy criteria in § 241.3(d)(1). However, based on the available information, as well as how this material is handled and used in the process, resinated wood is not being discarded when used as a fuel, and thus, should not be considered a solid waste when burned as a fuel.

As discussed in the 2011 NHSM final rule, wood product plants have been designed to specifically utilize these residuals that the wood manufacturing process creates and would not be able to operate as designed without this material. For example, sander dust injector systems have been specifically developed to accommodate the unique combustion requirements of this material and these injector systems have been installed on many boiler and wood drying systems within the industry.[54] Burners designed to combust sander dust or trim may not be suitable for combusting other fuels—thus, the cost of these residual materials relative to the cost of using other fuels would be a major consideration.[55] Overall, in composite panel manufacturing, plants typically reuse 58 percent of these residual materials in the process and 35 percent is burned for energy recovery.[56]

Resinated wood is highly valued within the wood products industry for its high fuel value relative to other wood fuels generated and burned at these facilities for energy recovery. Many facilities rely on mixing of these low moisture content wood materials with higher moisture materials. Resinated wood residuals are routinely transferred between either intra- or inter- company facilities and used as either ''furnish'' (*i.e.,* raw materials) or fuel at the receiving facilities. The material being transferred off-site is used and handled in the same manner that resinated wood residuals are used when generated on-site. In general, the motivation to use the resinated wood as a fuel, even with the slightly higher formaldehyde levels, predominates over the motivation to dispose of the formaldehyde. See *American Petroleum Institute* v. *EPA,* 216 F.3d 50, 58 (DC Cir. 2000) (in declaring reclaimed oily wastewater to be a waste, the EPA failed to explain why the discard motivation predominated the recycling motivation). Indeed, discard of the formaldehyde is a very distant second to the fuel product use of the resinated wood.

The heating value range presented (8,500–9,000 Btu/lb) indicates that resinated wood residuals have heating values significantly greater than the 5,000 Btu/lb level described in the preamble to the 2011 NHSM final rule for presuming compliance with the meaningful heating value legitimacy criterion (codified at § 241.3(d)(1)(ii)). Resinated wood residuals also are managed as a valuable commodity since these residuals are managed as a primary fuel for wood products manufacturers.

While we received limited contaminant information prior to the promulgation of the final rule, the data we have suggest that resins and adhesives containing formaldehyde react within the resin curing process, leaving ''free'' formaldehyde at levels less than 0.02 percent (or 200 ppm). In addition, new national rules, as mandated by the CARB Composite Wood ATCM, per new Public Law 111–199, will reduce the formaldehyde levels even further.[57]

While we acknowledge that these levels may not always meet the contaminant legitimacy criterion in every situation, in today's action, we are proposing a categorical non-waste determination for resinated wood that is used as fuel. We are proposing to codify this determination, balancing the legitimacy criteria and other relevant factors based on the fact that resinated wood residuals that are used as fuels represents an integral component to the wood manufacturing process and, as such, resinated wood residuals are not being discarded when burned as fuels. That is, the purpose of burning these wood residuals (including the resins that they contain, which themselves contribute to the heating value of the material) is not to destroy or discard them, as they are clearly considered and managed as a valuable commodity to the manufacturing process.

In making this determination, we note the extent to which resinated wood is used as fuels throughout the wood manufacturing industry and that often the use of resinated wood as fuel is essential to the wood manufacturing process. We also note the prevalence of wood product plants that have been designed specifically to utilize these residuals for their fuel value; in fact, many (if not most) wood products plants would not be able to operate as designed without the use of these

[52] 76 FR at 15492. Data cited submitted as comments on the 2010 NHSM Proposed Rule and can be found in the docket EPA–HQ–RCRA–2008–0329. See also Materials Characterization Papers in Support of the Final Rulemakings—Identification of Non-Hazardous Secondary Materials that are Solid Wastes: Scrap Tires (February 3, 2011); Traditional Fuels and Key Derivatives (February 7, 2011) in docket EPA–HQ–RCRA–2008–0329. We also note that we have developed, in support of today's proposed rulemaking, a new background document that includes updated information regarding scrap tires, as well as the other NHSM discussed in today's proposal. This document is entitled ''Resinated Wood, Scrap Tire, and Pulp/Paper Sludge Support Document'' and can also be found in docket EPA–HQ–RCRA–2008–0329.

[53] 40 CFR 241.2 defines resinated wood as wood products (containing resin adhesives) derived from primary and secondary wood products manufacturing and comprised of such items as board trim, sander dust and panel trim.

[54] American Forest and Paper Association, August 3, 2010. EPA Docket ID EPA–HQ–RCRA–2008–0329.

[55] For example, Composite Panel Association, in comments on the NHSM Proposed Rule, stated, ''Estimates for the cost of a composite panel plant to switch boiler fuel from a trim/sander dust mix to natural gas ranged from $1 million to $3.5 million a year depending on boiler size and the price of natural gas. For direct fired dryers alone, the cost to switch from sander dust to natural gas ranged from $350,000 to $1.4 million a year, again depending on dryer size and gas prices. These costs do not include the re-engineering costs that would be necessitated nor do they include the cost of transportation or off-site disposal of this valuable fuel. Moreover, these costs do not take into account the severe costs implications on all wood product facilities that currently utilize resinated fuels in process heaters or dryers.'' EPA Docket ID: EPA–HQ–RCRA–2008–0329–1358.

[56] The Generation and Utilization of Residuals from Composite Panel Products; Forest Products Journal 54:2, 2004; David C. Smith.

[57] Information received from the wood manufacturing industry indicates that formaldehyde levels will be reduced to less than 100 ppm in resinated wood based on the new CARB rules. These data are provided in the docket for today's proposed rule.

materials as fuel. Thus, resinated wood residuals are not being discarded when used as fuel and, therefore, we are proposing to specifically identify them as a non-waste fuel in § 241.4. By specifically listing them as a non-waste fuel, generators or combustors of this material will not need to make legitimacy determinations on a site-by-site basis.

4. Rulemaking Petition Process for Other Non-Waste Determinations

The Agency recognizes that there may be other NHSMs that can also be considered non-wastes when burned as fuels in combustion units when balancing the legitimacy criteria and other relevant factors. Thus, under today's proposed rule, we are proposing a process whereby persons may submit a rulemaking petition to the Administrator where they can identify and request that additional NHSMs be listed in section 241.4.[58] The petition process would be similar to 40 CFR 260.20, where any person may petition the Administrator to modify or revoke any provisions of the hazardous waste rules, and where procedures governing the EPA's action on those petitions are established. The section 260.20 standards reflect normal, informal rulemaking procedures under the APA and thus serve as an appropriate model for the NHSM petitions under this section.

In the context of a rulemaking petition under section 241.4(b), any person would be able to petition the Administrator for a regulatory amendment to identify and request that additional NHSMs be included on the list of materials in section 241.4(a) that are not solid wastes when used as a fuel in a combustion unit. To be successful, the petitioner would need to demonstrate to the satisfaction of the Administrator that the proposed regulatory amendment involves a NHSM that has not been previously discarded (*i.e.,* was not initially abandoned or thrown away). The petitioner must also demonstrate that the material is used as a non-waste fuel in a combustion unit because it either meets the legitimacy criteria, or, after balancing the legitimacy criteria with other relevant factors, such NHSM(s) is not a solid waste when used as a fuel in a combustion unit.

If the applicant believes that the NHSM is a legitimate product and not discarded despite not meeting legitimacy criteria, additional information must be submitted to explain or describe why such NHSM should be considered a non-waste fuel. Possible factors to address include, but are not limited to:

- The extent that use of the NHSM has been integrally tied to the industrial production process. Information can include combustor design specifications, the extent that use of the material is integrated across the industry, and the extent that use of the NHSM is essential to the industrial process, and/or
- The extent that the NHSM is functionally the same as the comparable traditional fuel, and
- Other relevant factors.

The application would be required to include (1) The petitioner's name and address; (2) a statement of the petitioner's interest in the proposed action; (3) a description of the proposed action, including the specific NHSM, the industry (*i.e.,* NAICS code) and functional use (*i.e.,* industrial functional code listed in 40 CFR 710.52(c)(4)(i)(C)); and (4) a statement of the need and justification for the proposed action, including any supporting tests, studies, or other information. Where such NHSM(s) do not meet the legitimacy criteria, the applicant must explain why such NHSM should be considered a non-waste fuel, balancing the legitimacy criteria with other relevant factors.

Under this petition process, the Administrator would make a tentative decision to grant or deny a petition and then publish notice of such tentative decision, either in the form of an ANPRM, a proposed rule, or a tentative determination to deny the petition, in the **Federal Register** for written public comment. The Administrator could, at its discretion, hold an informal public hearing to consider oral comments on the tentative decision. After evaluating all public comments, the Administrator would make a final decision by publishing in the **Federal Register** a regulatory amendment or a denial of the petition.

E. Additional Request for Comment

1. Pulp and Paper Sludges

As we discuss elsewhere in this preamble, the Agency is proposing to identify and categorically list NHSMs as being a non-waste fuel, whether burned within the control of the generator or outside the control of the generator (see 241.4(a)). By listing these NHSMs categorically, persons would not have to make individual determinations as to whether or not these NHSMs are solid wastes. In addition, the Agency is also proposing that in considering whether or not to list a NHSM as a non-waste fuel, that the Agency can balance the legitimacy criteria, and such other relevant factors that the Administrator may identify. Such additional factors may include, but are not limited to, whether the NHSM's use as a fuel has been integrally tied to the industrial production process and the extent to which the NHSM when used as a fuel is consistent with that of fuel product.

With regard to pulp and paper sludges, the 2011 NHSM final rule specifically concluded the following ''The final rule will retain the proposed approach—pulp and paper sludges managed within control of the generator are a non-waste fuel as they would seem to meet all of the legitimacy criteria * * * '', (See 76 FR 15488, March 21, 2011). We received several questions about these materials following issuance of the final rule. As discussed below, based on the current record, the EPA continues to believe that these pulp and paper sludges meet the legitimacy criteria and can be burned as a non-waste fuel in accordance with existing section 241.3(b)(1) provided such combustion units are within the control of the generator. In this section, we discuss the information we currently have on these sludges, and the additional information that the Agency needs before we could categorically list these materials in section 241.4(a) as a non-waste fuel. If such information is provided to the EPA, and after balancing the legitimacy criteria with other relevant factors that the EPA believes that these sludges are not solid wastes when combusted, the EPA is prepared to add pulp and paper sludges to the list of non-waste fuels in section 241.4(a).

Pulp and paper mill sludges, both primary and secondary, are produced from the wastewater treatment of process effluents. In the pulping and papermaking process, maximizing wood fiber recovery is essential in making the process efficient and cost-effective. However, there are fibers that end up being too short (fines) that can be detrimental to paper quality and that inhibit the papermaking capacity of the paper machine. Mills thoroughly clean and screen the wood fibers to retain the suitable fibers and remove the excess fines. These fines end up in the

[58] This approach is consistent with the approach EPA recently proposed in the July 2011 Definition of Solid Waste (DSW) proposed rule (76 FR 44094), whereby the Agency is proposing to require that persons who claim that they are legitimately reclaiming a hazardous secondary material meet all four legitimacy criteria, but is providing a petition process whereby they can petition EPA that such materials, when looking at the hazardous secondary material and recycling activity as a whole, would still be considered legitimate recycling. The primary difference between the two is that in the DSW proposed rule, the demonstration is made on a site-specific basis, whereas in today's proposed rule, the demonstration would be made on a material-by-material basis.

wastewater stream and, eventually, in the sludge. Therefore, these sludges, which are approximately 90–95 percent biomass on a dry weight basis, are essentially no different than the biomass-based wood fibers that enter the pulping or papermaking process, except that the fibers are too short to be suitable for papermaking; these sludges also contain microorganisms that feed on organic material in the wastewater stream.

The EPA compared the contaminant concentrations in pulp and paper sludges to levels found in coal and untreated wood, since both these traditional fuels can be burned in pulp and paper mills. As we discussed in the preamble to the final NHSM rule, chlorine levels from one set of pulp and paper sludge samples submitted in the public comments had an arithmetic mean of 465 ppm, a median of 318 ppm, a maximum level among mill means of 2,399 ppm, and a maximum among individual analyses of 4,800 ppm (all on a dry weight basis). Other samples had chlorine concentrations of between 1,050–4,800 ppm (dry basis). When comparing information on pulp and paper sludge to the information that we have compiled on coal, we found that chlorine levels in coal are reported to be as high as 7,400 ppm, and that average chlorine values for bituminous and sub-bituminous coal are 1,200 ppm and 140 ppm, respectively. Thus, the average chlorine levels reported in most pulp and paper sludge are likely to be comparable with average chlorine levels found in bituminous coal. We also determined that the chlorine levels in pulp and paper sludge would be comparable to untreated wood, given that untreated wood had chlorine levels as high as 11,890 ppm.[59] We note that there is one sample in the submitted data set for a pulp and paper sludge that has a chlorine concentration of 16,550 ppm. However, since this was the only sample with such a high concentration of chlorine, we did not think that it was representative of pulp and paper sludges generally. Since promulgation of the 2011 NHSM final rule, EPA has received additional contaminant data regarding these pulp and paper sludges from the forest products industry, which demonstrate even more clearly that this one sample is anomalous. Regarding chlorine levels in particular, the forest products industry provided data for 93 samples of pulp and paper sludges. This data set shows the mean value for chlorine to be 361 ppm, with a standard deviation of 661 ppm, and a 90 percent confidence interval at 1,217 ppm. We also determined that the levels of metals were lower in pulp and paper sludges than in both untreated wood and coal. Such data further support the conclusions outlined in the final NHSM rule that, based on information received by the Agency, pulp and paper sludge meets the contaminant legitimacy criterion (76 FR 15488).

While pulp and paper sludges can have a heating value below 5,000 Btu/lb, pulp and paper mills typically improve the heating value through dewatering. Data from the Boiler/CISWI database established for those rules indicate that Btu/lb values exceeded 5,000 Btu/lb for pulp and paper sludge measured on a dry weight basis. Thus, we believe that pulp and paper sludges meet the meaningful heating value legitimacy criterion when dewatered. Also, since pulp and paper sludges are handled promptly (*i.e.,* not stored for long periods of time and are contained in storage units along with traditional fuels (such as wood and bark) with minimal loss (similar to a valuable commodity), the EPA believes that pulp and paper sludges are managed as a valuable commodity (see 76 FR 15488–89, March 21, 2011).

Thus, based on the current record, the EPA believes that these pulp and paper sludges meet the legitimacy criteria and can be burned as a non-waste fuel provided such combustion units are within the control of the generator in accordance with section 241.3(b)(1).[60] As noted in section II. D., facilities are not required to test contaminant levels to demonstrate such legitimacy, but rather, persons can use expert or process knowledge, as well as data generated from similar facilities, to make those determinations.

To the extent industry and other commenters believe that these pulp and paper sludges should be categorically listed in section 241.4(a), they will need to provide the Agency with appropriate information, as discussed later in this section. In such instances, the Agency can list a NHSM as a non-waste fuel by balancing the legitimacy criteria and such other relevant factors that the Administrator may identify.

For example, the Agency is proposing to list categorically resinated wood residuals as a non-waste fuel balancing the legitimacy criteria with other relevant factors. These other additional factors include, but are not limited to, whether the NHSM's use as a fuel has been integrally tied to the industrial production process and the extent to which the NHSM is consistent with that of a fuel product. Specifically, as discussed in section II.D.3.b, we are relying on information about the high Btu values, the fact that wood product plants have been designed to specifically utilize these residuals that the wood manufacturing process creates and without which they would not be able to operate as designed, and information about how the materials are managed off-site as an indication that these materials are not being discarded.

For pulp and paper sludges, we would need similar information to support adding these materials to section 241.4(a). Specifically, the types of information that would be particularly helpful include: (1) Documentation of how the use of pulp and paper sludges that are used as a fuel are integrated into the industrial production process and the steps taken industry-wide to ensure that this NHSM is consistently used as a legitimate fuel and is not discarded, including when transferred to a different person for use as a fuel, (2) documentation on the amount of pulp and paper sludges burned as a fuel (whether within the control of the generator or outside the control of the generator), and what determines which pulp and paper sludges are burned as a fuel, as opposed to being land applied or disposed,[61] (3) additional data regarding the contaminant levels of the various HAP, such as chlorine and metals, and what steps the industry has taken to ensure the quality of these sludges when used as a fuel are consistent with that of fuel product, (4) information on standard practices used to ensure that these sludges have a meaningful heating value, including the types of dewatering and other processing steps that these sludges are subject to, as well as information on whether any pulp and paper sludges that are burned as a fuel are done so without any processing,

[59] Since promulgation of the 2011 NHSM final rule, the EPA has updated and reorganized its traditional fuel data to reflect data supporting the 2011 Major Source Boiler final rule and the 2011 CISWI final rule, whereas the previous version of the paper relied on data supporting the 2010 Major Source Boiler proposed rule and the 2010 CISWI proposed rule. Contaminant data have also been reorganized to better reflect revisions to the definition of ''contaminants'' and the contaminant legitimacy criterion in today's proposed NHSM rule. The updated data can be found at *http://www.epa.gov/epawaste/nonhaz/define/index*. The Agency will update this information as appropriate.

[60] We also note that pulp and paper sludges almost entirely remain on-site and within the control of the generator when burned as fuels. To the extent that pulp and paper sludges do not remain within the control of the generator and are used as fuels, the petition process established in 40 CFR 241.3(c) could apply to these materials, as appropriate.

[61] The Agency's latest data indicate that between 20 and 25 percent of these pulp and paper sludge are burned as a fuel.

including dewatering, and (5) when shipped to a different person for use as a fuel, how these sludges are managed, including how they are shipped, any processing that may occur, and how long these sludges are typically stored prior to being burned as a fuel. If the information that the EPA receives suggests that after a balancing of the legitimacy criteria and any other relevant factors, such that when the facts are viewed, as a whole, the sludges are non-waste fuels, the EPA will consider adding pulp and paper sludge to the list of non-waste fuels in 40 CFR 241.4(a).

2. Coal Refuse

Coal refuse is generated when coal is mined, and is comprised of non-combustible rock with some attached carbon material that is not easily separated due to its small size. The EPA's Coal Refuse Materials Characterization Paper indicates that there are 18 coal refuse plants (Fossil Fuel Electric Power Generation–NAICS 221112), and 13 more that use it as a secondary fuel, with bituminous coal as their primary fuel. This paper did not provide an official estimate of the annual volume of coal refuse that is generated, nor the amount that is stored in legacy piles.

In an August 15, 2011 letter to the Anthracite Region Independent Power Producers Association (ARIPPA), EPA addressed industry concerns about whether coal refuse from legacy piles, when used as a fuel in combustion units, would be considered a solid waste under the non-hazardous secondary materials (NHSM) rule. After reaffirming that EPA has determined that currently-generated coal refuse is an alternative fuel, EPA addressed coal refuse from legacy piles. While noting that coal refuse from legacy piles "* * * has clearly been discarded and is a solid waste unless sufficiently processed into a new legitimate fuel product," EPA also states that it has determined that such refuse is processed no differently than currently generated coal refuse, and therefore meets EPA's requirements for processing under 40 CFR 241.2. The EPA goes on to declare that post-processed coal refuse from legacy piles meets the first two criteria for treatment as a non-waste fuel when combusted: materials are managed in the same manner, and would have similar heating values, as currently generated coal refuse, which is a traditional fuel.

The EPA then addresses the third criterion—whether the material contains contaminants at levels comparable to or lower than traditional fuels. The EPA affirms that because currently-generated coal refuse is a traditional fuel, such fuel is the traditional fuel benchmark when comparing contaminant levels with coal refuse found in legacy piles. The EPA also notes that since legacy coal refuse is processed in the same manner as currently-generated coal refuse, EPA expects that post-processed coal refuse from legacy piles satisfies EPA's contaminant legitimacy criterion. Thus, post-processed coal refuse from legacy piles are not being discarded when used as fuel and, therefore, we are taking comment on specifically identifying them as a non-waste fuel in § 241.4.

F. Effect of This Proposed Rule on Other Programs

1. Clean Air Act

During the 2011 NHSM final rulemaking, the EPA assessed the effects of that final rule on other programs. See 76 FR 15545–15546. The reconsideration proposals for the CISWI and boiler rules are consistent with the proposed revisions. These proposed NHSM revisions resulted in only minimal changes to the inventories for CISWI and boilers.

2. Subtitle C Hazardous Waste Program/ Definition of Solid Waste Rule

The result of this rule will have no effect on the RCRA subtitle C hazardous waste program because it does not address hazardous waste. The RCRA subtitle C hazardous waste federal program has a long regulatory history in defining "solid waste" for purposes of the hazardous waste regulations. However, the 40 CFR 261.2 definition of solid waste explicitly applies only to wastes that also are hazardous for purposes of the subtitle C regulations (see 40 CFR 261.1(b)(1)). Section 129 of the CAA also specifically excludes subtitle C combustion units from coverage under that section.

Section 7003 of the RCRA gives the EPA the authority to compel actions to abate conditions that may present an "imminent and substantial endangerment" involving both solid and hazardous wastes. The EPA uses this authority on a case-by-case basis. The Agency can determine in a specific factual context whether a NHSM causes an imminent and substantial endangerment to human health and the environment. Also, RCRA sections 3007 and 3008 establish the EPA's inspection and federal enforcement authority to address violations of the subtitle C hazardous waste regulations. Nothing in this rule shall impact the EPA's ability to act pursuant to RCRA sections 3007, 3008 and 7003. The rule also does not limit or otherwise affect the EPA's ability to pursue potentially responsible persons under section 107 of CERCLA for releases or threatened releases of hazardous substances.

G. State Authority

1. Relationship to State Programs

This proposal does not change the relationship to state programs as described in the 2011 NHSM final rule. Refer to section IX of the 2011 NHSM final rule (76 FR 15546) for the discussion on state authority including: "Applicability of State Solid Waste Definitions and Beneficial Use Determinations" and "Clarifications on the Relationship to State Programs." The Agency, however, would like to reiterate a few points.

Section 129 of the CAA states that the term "solid waste" shall have the meaning "established by the Administrator pursuant to [RCRA]." Consequently, the EPA issued the final NHSM rule to provide a definition of "solid waste" under RCRA in order to determine which NHSMs would be subject to the emissions standards under sections 112 and 129 of the CAA. In short, if a NHSM is not a "solid waste" under RCRA, and is burned in a combustion unit, then the combustion unit that burns the material would be subject to the applicable CAA section 112 requirements. On the other hand, if the NHSM is considered a "solid waste," then the combustion unit that burns the material would be subject to the applicable CAA 129 requirements, even if energy or material recovery also occurs. The part 241 waste determination only applies to those NHSMs that are combusted and does not address other uses.

This proposed rule (like the March 2011 final rule) is not intended to interfere with a state's program authority over the general management of waste. For a further discussion on the relationship to state authority, see the discussion in the preamble to the 2011 NHSM final rule at 76 FR 15546.

2. State Adoption of the Rulemaking

No federal approval procedures for state adoption of today's proposed rule are included in this rulemaking action under RCRA subtitle D. Although the EPA does promulgate criteria for solid waste landfills and approves state MSW landfill permitting programs, RCRA does not provide the EPA with authority to approve state programs beyond MSW landfill permitting programs. While states are not required to adopt regulations promulgated under RCRA

subtitle D, some states incorporate federal regulations by reference or have specific state statutory requirements that their state program can be no more stringent than the federal regulations. In those cases, the EPA anticipates that, if required by state law, the changes being proposed today, if finalized, will be incorporated (or possibly adopted by authorized state air programs) consistent with the state's laws and administrative procedures.

H. Cost and Benefits of the Proposed Rule

The RCRA aspects of this proposed rule do not directly invoke any costs (excluding minor administrative burden/cost), or benefits. Any RCRA related costs to the regulated community, and corresponding benefits to human health and the environment, have been considered as part of the current CISWI action, and the corresponding CISWI and Boiler MACT (area source and major source) final rules. As such, the Agency has not prepared a separate cost-benefit assessment in support of this part of the proposal. Consequently, any potential costs or benefits, including impacts to small entities, indirectly associated with the RCRA aspects of this proposal are addressed in the corresponding impacts assessment prepared in support of the CISWI part of this action.

III. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, the EPA submitted this action to OMB for review under Executive Order 12866 and Executive Order 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This proposed rule does not impose any new information collection burden. However, OMB has previously approved the information collection requirements contained in the existing CISWI and NHSM[62] regulations (40 CFR part 60, subparts CCCC and DDDD, and 40 CFR part 241) under the provisions of the PRA, 44 U.S.C. 3501, *et seq.,* and has been assigned EPA ICR number 2384.03 for subpart CCCC, 40 CFR part 60, EPA ICR number 2385.03 for subpart DDDD, 40 CFR part 60, and EPA ICR number 2382.03 for 40 CFR part 241.

This action is believed to result in no changes to the information collection requirements of the final NHSM rule and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB. Due to changes in the CISWI inventory and monitoring requirements of the CISWI rule, the information collection estimate of project cost and hour burden have been revised. Therefore, only the CISWI ICR has been revised. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of the rule on small entities, small entity is defined as: (1) A small business as defined by the SBA's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on any entities because it does not impose any additional regulatory requirements relative to those specified in the March 2011 final CISWI and NHSM rules. The March 2011 final CISWI and NHSM rules were both certified as not having a significant economic impact on a substantial number of small entities. In this proposed action, there are three fewer small entities in the CISWI than in the March 2011 final CISWI rule, as discussed in the ''Economic Impact Analysis: Reconsideration Proposal Inputs Comparison'' memorandum in the CISWI docket. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate or the private sector in any one year. This rule proposes amendments to the final CISWI rule provisions and technical clarifications to the final NHSM rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA. However, the final CISWI rule contains a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, we have prepared under section 202 of the UMRA a written statement, which is summarized in the preamble to the final CISWI rule (76 FR 15747).

This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule will not impose direct compliance costs on state or local governments and will not preempt state law. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicited comment on the proposed CISWI and NHSM regulations from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, (65 FR 67249; November 9, 2000). The EPA is not aware of any CISWI in Indian country or owned or operated by Indian tribal governments. The CISWI aspects of this rule may, however, invoke minor indirect tribal implications to the extent that entities generating solid wastes on tribal lands could be affected. However, any indirect

[62] Identification of Non-Hazardous Secondary Materials That Are Solid Waste, Final Rule. March 11, 2011.

NHSM impacts that may occur as a result of the CISWI action are expected to be negligible due to the very limited focus of the CISWI part or this rule. Thus, Executive Order 13175 does not apply to this action.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based solely on technology performance and technical corrections.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to result in a significant adverse effect on the supply, distribution, or use of energy. The EPA estimates that the requirements in this rule would cause most CISWI in the ERU and waste-burning kiln subcategories to modify existing air pollution control devices (*e.g.,* increase the horsepower of their wet scrubbers) or install and operate new control devices, resulting in approximately 242,283 MW-hours per year of additional electricity being used.

Given the negligible change in energy consumption expected to result from this rule, the EPA does not expect any significant price increase for any energy type. The cost of energy distribution should not be affected by this rule at all since the rule would not affect energy distribution facilities. We also expect that any impacts on the import of foreign energy supplies, or any other adverse outcomes that may occur with regards to energy supplies, would not be significant. We, therefore, conclude that if there were to be any adverse energy effects associated with this rule, they would be minimal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the NTTAA of 1995, Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use VCS in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not use available and applicable VCS.

This proposed rulemaking does not involve any revisions to the technical standards or test methods required in the final CISWI rule. Therefore, the EPA did not reconsider the use of any VCS for this proposal.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on EJ. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The amendments do not relax the control measures on sources regulated by the CISWI rule, and, therefore, will not cause emissions increases from these sources. The March 2011 final CISWI rule will reduce emissions of all the listed HAP emitted from this source. Furthermore, the targeted revisions proposed in the NHSM section of this rule are designed to improve the management of these materials, thereby helping to further ensure against any disproportionately high and adverse human health or environmental effects on minority or low-income populations.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances.

40 CFR Part 241

Environmental protection, air pollution control, waste treatment and disposal.

Dated: December 2, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, Title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

2. Section 60.17 is amended by:
a. Adding paragraph (a)(93).
b. Revising paragraph (h)(4).
c. Adding paragraph (o).

§ 60.17 Incorporations by reference.

* * * * *

(a) * * *

(93) ASTM D6784–02 (Reapproved 2008) Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), approved April 1, 2008, IBR approved for §§ 60.2165(j), 60.2730(j), tables 1, 5, 6 and 8 to subpart CCCC, and tables 2, 6, 7, and 9 to subpart DDDD, §§ 60.4900(b)(4)(v), 60.5220(b)(4)(v), tables 1 and 2 to subpart LLLL, and tables 2 and 3 to subpart MMMM.

* * * * *

(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], IBR approved for § 60.56c(b)(4), § 60.63(f)(2) and (f)(4), § 60.106(e)(2), §§ 60.104a(d)(3), (d)(5), (d)(6), (h)(3), (h)(4), (h)(5), (i)(3), (i)(4), (i)(5), (j)(3), and (j)(4), § 60.105a(d)(4), (f)(2), (f)(4), (g)(2), and (g)(4), § 60.106a(a)(1)(iii), (a)(2)(iii), (a)(2)(v), (a)(2)(viii), (a)(3)(ii), and (a)(3)(v), and § 60.107a(a)(1)(ii), (a)(1)(iv), (a)(2)(ii), (c)(2), (c)(4), and (d)(2), tables 1 and 3 of subpart EEEE, tables 2 and 4 of subpart FFFF, table 2 of subpart JJJJ, §§ 60.4415(a)(2) and (a)(3), 60.2145(s)(1)(i) and (ii), 60.2145(t)(1)(ii), 60.2145(t)(5)(i), 60.2710(s)(1)(i) and (ii), 60.2710(t)(1)(ii), 60.2710(t)(5)(i), 60.2710(w)(3), 60.2730(q)(3), 60.4900(b)(4)(vii) and (viii), 60.4900(b)(5)(i), 60.5220(b)(4)(vii) and (viii), 60.5220(b)(5)(i), tables 1 and 2 to subpart LLLL, and tables 2 and 3 to subpart MMMM.

* * * * *

(o) The following material is available from the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 272–0167, *http://www.epa.gov*.

(1) Office of Air Quality Planning and Standards (OAQPS) Fabric Filter Bag Leak Detection Guidance, EPA–454/R–98–015, September 1997, IBR approved for §§ 60.2145(r)(2), 60.2710(r)(2), 60.4905(b)(3)(i)(B), and 60.5225(b)(3)(i)(B).

(2) [Reserved]

3. Revise the heading for subpart CCCC to read as follows:

Subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units

* * * * *

4. Section 60.2005 is revised to read as follows:

§ 60.2005 When does this subpart become effective?

This subpart takes effect on [*DATE 6 MONTHS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*]. Some of the requirements in this subpart apply to planning the CISWI unit (*i.e.,* the preconstruction requirements in §§ 60.2045 and 60.2050). Other requirements such as the emission limitations and operating limits apply after the CISWI unit begins operation.

5. Section 60.2015 is revised to read as follows:

§ 60.2015 What is a new incineration unit?

(a) A new incineration unit is an incineration unit that meets any of the criteria specified in paragraph (a)(1) through (a)(2) of this section.

(1) A CISWI unit that commenced construction after [*DATE OF 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*].

(2) A CISWI unit that commenced reconstruction or modification after [*DATE 6 MONTHS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*].

(b) This subpart does not affect your CISWI unit if you make physical or operational changes to your incineration unit to comply with subpart DDDD of this part (Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units). Such changes do not qualify as reconstruction or modification under this subpart.

6. Section 60.2020 is amended by:

a. Revising the introductory text.

b. Removing and reserving paragraph (b).

c. Revising paragraph (c).

d. Revising paragraphs (e)(3), (f)(3), (g), (m), and (n).

e. Removing and reserving paragraphs (j), (k), and (l).

f. Removing paragraph (o).

§ 60.2020 What combustion units are exempt from this subpart?

This subpart exempts the types of units described in paragraphs (a), (c) through (i), and (n) of this section, but some units are required to provide notifications. Air curtain incinerators are exempt from the requirements in this subpart except for the provisions in §§ 60.2242, 60.2250, and 60.2260.

* * * * *

(c) *Municipal waste combustion units.* Incineration units that are subject to subpart Ea of this part (Standards of Performance for Municipal Waste Combustors); subpart Eb of this part (Standards of Performance for Large Municipal Waste Combustors); subpart Cb of this part (Emission Guidelines and Compliance Time for Large Municipal Combustors); subpart AAAA of this part (Standards of Performance for Small Municipal Waste Combustion Units); or subpart BBBB of this part (Emission Guidelines for Small Municipal Waste Combustion Units).

* * * * *

(e) * * *

(3) You submit a request to the Administrator for a determination that the qualifying cogeneration facility is combusting homogenous waste as that term is defined in § 60.2265. The request must include information sufficient to document that the unit meets the criteria of the definition of a small power production facility and that the waste material the unit is proposed to burn is homogeneous.

* * * * *

(f) * * *

(3) You submit a request to the Administrator for a determination that the qualifying cogeneration facility is combusting homogenous waste as that term is defined in § 60.2265. The request must include information sufficient to document that the unit meets the criteria of the definition of a cogeneration facility and that the waste material the unit is combusting is homogeneous.

(g) *Hazardous waste combustion units.* Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

* * * * *

(m) *Sewage treatment plants.* Incineration units regulated under subpart O of this part (Standards of Performance for Sewage Treatment Plants).

(n) *Sewage sludge incineration units.* Incineration units combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that are subject to subpart LLLL of this part (Standards of Performance for Sewage Sludge Incineration Units) or subpart MMMM of this part (Emission Guidelines for Sewage Sludge Incineration Units).

§ 60.2025 [Removed]

7. Section 60.2025 is removed.

8. Section 60.2030 is amended by:

a. Revising paragraph (c) introductory text.

b. Removing and reserving paragraph (c)(5).

c. Adding paragraphs (c)(8) through (c)(10).

§ 60.2030 Who implements and enforces this subpart?

* * * * *

(c) The authorities that will not be delegated to state, local, or tribal agencies are specified in paragraphs (c)(1) through (4) and (c)(6) through (10) of this section.

* * * * *

(8) Approval of alternative opacity emission limits in § 60.2105 under § 60.11(e)(6) through (8).

(9) Performance test and data reduction waivers under § 60.2125(j), 60.8(b)(4) and (5).

(10) Determination of whether a qualifying small power production facility or cogeneration facility under § 60.2020(e) or (f) is combusting homogenous waste as that term is defined in § 60.2265.

9. Section 60.2045 is revised to read as follows:

§ 60.2030 Who implements and enforces this subpart?

(a) You must prepare a siting analysis if you plan to commence construction of an incinerator after December 1, 2000.

(b) You must prepare a siting analysis for CISWI units that commenced construction after June 4, 2010, or that commenced reconstruction or modification after [*DATE 6 MONTHS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*].

(c) You must prepare a siting analysis if you are required to submit an initial application for a construction permit under 40 CFR part 51, subpart I, or 40 CFR part 52, as applicable, for the reconstruction or modification of your CISWI unit.

10. Section 60.2070 is amended by revising paragraph (c)(1)(vii) to read as follows:

§ 60.2070 What are the operator training and qualification requirements?

* * * * *

(c) * * *

(1) * * *

(vii) Actions to prevent and correct malfunctions or to prevent conditions that may lead to malfunctions.

* * * * *

11. Section 60.2085 is amended by revising paragraph (d) to read as follows:

§ 60.2085 How do I maintain my operator qualification?

* * * * *

(d) Prevention and correction of malfunctions or conditions that may lead to malfunction.

* * * * *

12. Section 60.2105 is revised to read as follows:

§ 60.2105 What emission limitations must I meet and by when?

(a) You must meet the emission limitations for each CISWI unit, including bypass stack or vent, specified in table 1 of this subpart or tables 5 through 8 of this subpart by the applicable date in § 60.2140. You must be in compliance with the emission limitations of this subpart that apply to you at all times.

(b) An incinerator unit that commenced construction after November 30, 1999, but no later than June 4, 2010, or that commenced reconstruction or modification on or after June 1, 2001, but no later than [*DATE 6 MONTHS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*] must meet the more stringent emission limit for the respective pollutant in table 1 of this subpart or table 6 of subpart DDDD.

13. Section 60.2110 is amended by:

a. Revising paragraph (a) introductory text.

b. Revising paragraphs (a)(2) through (4).

c. Adding paragraphs (d) through (g).

§ 60.2110 What operating limits must I meet and by when?

(a) If you use a wet scrubber(s) to comply with the emission limitations, you must establish operating limits for up to four operating parameters (as specified in table 2 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

* * * * *

(2) Minimum pressure drop across the wet particulate matter scrubber, which is calculated as the lowest 1-hour average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the fan for the wet scrubber, which is calculated as the lowest 1-hour average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquid flow rate, which is calculated as the lowest 1-hour average liquid flow rate at the inlet to the wet acid gas or particulate matter scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as the lowest 1-hour average liquor pH at the inlet to the wet acid gas scrubber measured during the most recent performance test demonstrating compliance with the hydrogen chloride emission limitation.

* * * * *

(d) If you use an electrostatic precipitator to comply with the emission limitations, you must measure the (secondary) voltage and amperage of the electrostatic precipitator collection plates during the particulate matter performance test. Calculate the average electric power value (secondary voltage × secondary current = secondary electric power) for each test run. The operating limit for the electrostatic precipitator is calculated as the lowest 1-hour average secondary electric power measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(e) If you use activated carbon sorbent injection to comply with the emission limitations, you must measure the sorbent flow rate during the performance testing. The operating limit for the carbon sorbent injection is calculated as the lowest 1-hour average sorbent flow rate measured during the most recent performance test demonstrating compliance with the mercury emission limitations.

(f) If you use selective noncatalytic reduction to comply with the emission limitations, you must measure the charge rate, the secondary chamber temperature (if applicable to your CISWI unit), and the reagent flow rate during the nitrogen oxides performance testing. The operating limits for the selective noncatalytic reduction are calculated as the lowest 1-hour average charge rate, secondary chamber temperature, and reagent flow rate measured during the most recent performance test demonstrating compliance with the nitrogen oxides emission limitations.

(g) If you do not use a wet scrubber, electrostatic precipitator, or fabric filter to comply with the emission limitations, and if you do not determine compliance with your particulate matter emission limitation with a particulate matter CEMS, you must maintain opacity to less than or equal to 10 percent opacity (1-hour block average).

14. Section 60.2115 is revised to read as follows:

§ 60.2115 What if I do not use a wet scrubber, fabric filter, activated carbon injection, selective noncatalytic reduction, or an electrostatic precipitator to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber, activated carbon injection, selective noncatalytic reduction, fabric filter, or an electrostatic precipitator or limit emissions in some other manner, including material balances, to comply with the emission limitations under § 60.2105, you must petition the EPA Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the Administrator. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as additional operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

15. Section 60.2120 is revised to read as follows:

§ 60.2120 Affirmative Defense for Exceedance of an Emission Limit During Malfunction.

In response to an action to enforce the standards set forth in paragraph § 60.2105, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at 40 CFR 60.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner; and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(6) All emissions and/or parameter monitoring and systems, as well as control systems, were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) Notification. The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in § 60.2105 to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

16. Section 60.2125 is amended by:

a. Revising paragraph (c).

b. Revising paragraphs (g)(1) and (2).

c. Adding paragraphs (h) and (i) to read as follows:

§ 60.2125 How do I conduct the initial and annual performance test?

* * * * *

(c) All performance tests must be conducted using the minimum run duration specified in table 1 of this subpart or tables 5 through 8 of this subpart.

* * * * *

(g) * * *

(1) Measure the concentration of each dioxin/furan tetra-through octa-chlorinated isomer emitted using EPA Method 23 at 40 CFR part 60, appendix A–7.

(2) For each dioxin/furan (tetra-through octa-chlorinated) isomer measured in accordance with paragraph (g)(1) of this section, multiply the isomer concentration by its corresponding toxic equivalency factor specified in table 3 of this subpart.

* * * * *

(h) Method 22 at 40 CFR part 60, appendix A–7 of this part must be used to determine compliance with the fugitive ash emission limit in table 1 of this subpart or tables 5 through 8 of this subpart.

(i) If you have an applicable opacity operating limit, you must determine compliance with the opacity limit using Method 9 at 40 CFR part 60, appendix A–4 of this part, based on three 1-hour blocks consisting of ten 6-minute average opacity values, unless you are required to install a continuous opacity monitoring system, consistent with §§ 60.2145 and 60.2165.

17. Section 60.2130 is revised to read as follows:

§ 60.2130 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in table 1 of this subpart or tables 5 through 8 of this subpart.

18. Section 60.2135 is revised to read as follows:

§ 60.2135 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct a performance test, as required under §§ 60.2125 and 60.2105 to determine compliance with the emission limitations in table 1 of this subpart or tables 5 through 8 of this subpart, to establish compliance with any opacity operating limit in § 60.2110, and to establish operating limits using the procedures in §§ 60.2110 or 60.2115. The performance test must be conducted using the test methods listed in table 1 of this subpart or tables 5 through 8 of this subpart and the procedures in § 60.2125. The use of the bypass stack during a performance test shall invalidate the performance test. You must conduct a performance evaluation of each continuous monitoring system within 60 days of installation of the monitoring system.

19. Section 60.2140 is revised to read as follows:

§ 60.2140 By what date must I conduct the initial performance test?

(a) The initial performance test must be conducted within 60 days after your CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

(b) If you commence or recommence combusting a solid waste at an existing

combustion unit at any commercial or industrial facility, and you conducted a test consistent with the provisions of this subpart while combusting the solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber, you do not need to retest until 6 months from the date you reintroduce that solid waste.

(c) If you commence combusting or recommence combusting a solid waste at an existing combustion unit at any commercial or industrial facility and you have not conducted a performance test consistent with the provisions of this subpart while combusting the given solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber, you must conduct a performance test within 60 days commencing or recommencing solid waste combustion.

20. Section 60.2141 is added to read as follows:

§ 60.2141 By what date must I conduct the initial air pollution control device inspection?

(a) The initial air pollution control device inspection must be conducted within 60 days after installation of the control device and the associated CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after the device's initial startup.

(b) Within 10 operating days following an air pollution control device inspection, all necessary repairs must be completed unless the owner or operator obtains written approval from the state agency establishing a date whereby all necessary repairs of the designated facility must be completed.

21. Section 60.2145 is revised to read as follows:

§ 60.2145 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) Compliance with standards.

(1) The emission standards and operating requirements set forth in this subpart apply at all times.

(2) If you cease combusting solid waste, you may opt to remain subject to the provisions of this subpart. Consistent with the definition of CISWI unit, you are subject to the requirements of this subpart at least 6 months following the last date of solid waste combustion. Solid waste combustion is ceased when solid waste is not in the combustion chamber (*i.e.,* the solid waste feed to the combustor has been cut off for a period of time not less than the solid waste residence time).

(3) If you cease combusting solid waste, you must be in compliance with any newly applicable standards on the effective date of the waste-to-fuel switch. The effective date of the waste-to-fuel switch is a date selected by you, that must be at least 6 months from the date that you ceased combusting solid waste, consistent with § 60.2145(a)(2). Your source must remain in compliance with this subpart until the effective date of the waste-to-fuel switch.

(4) If you own or operate an existing commercial or industrial combustion unit that combusted a fuel or non-waste material, and you commence or recommence combustion of solid waste, you are subject to the provisions of this subpart as of the first day you introduce or reintroduce solid waste to the combustion chamber, and this date constitutes the effective date of the fuel-to-waste switch. You must complete all initial compliance demonstrations for any section 112 standards that are applicable to your facility before you commence or recommence combustion of solid waste. You must provide 30 days prior notice of the effective date of the waste-to-fuel switch. The notification must identify:

(i) The name of the owner or operator of the CISWI unit, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

(ii) The currently applicable subcategory under this subpart, and any 40 CFR part 63 subpart and subcategory that will be applicable after you cease combusting solid waste;

(iii) The fuel(s), non-waste material(s) and solid waste(s) the CISWI unit is currently combusting and has combusted over the past 6 months, and the fuel(s) or non-waste materials the unit will commence combusting;

(iv) The date on which you became subject to the currently applicable emission limits;

(v) The date upon which you will cease combusting solid waste, and the date (if different) that you intend for any new requirements to become applicable (*i.e.,* the effective date of the waste-to-fuel switch), consistent with (2) and (3)) above.

(5) All air pollution control equipment necessary for compliance with any newly applicable emissions limits which apply as a result of the cessation or commencement or recommencement of combusting solid waste must be installed and operational as of the effective date of the waste-to-fuel, or fuel-to-waste switch.

(6) All monitoring systems necessary for compliance with any newly applicable monitoring requirements which apply as a result of the cessation or commencement or recommencement of combusting solid waste must be installed and operational as of the effective date of the waste-to-fuel, or fuel-to-waste switch. All calibration and drift checks must be performed as of the effective date of the waste-to-fuel, or fuel-to-waste switch. Relative accuracy tests must be performed as of the performance test deadline for PM CEMS. Relative accuracy testing for other CEMS need not be repeated if that testing was previously performed consistent with Clean Air Act section 112 monitoring requirements or monitoring requirements under this subpart.

(b) You must conduct an annual performance test for the pollutants listed in table 1 of this subpart or tables 5 through 8 of this subpart and opacity for each CISWI unit as required under § 60.2125. The annual performance test must be conducted using the test methods listed in table 1 of this subpart or tables 5 through 8 of this subpart and the procedures in § 60.2125. Annual performance tests are not required if you use CEMS or continuous opacity monitoring systems to determine compliance.

(c) You must continuously monitor the operating parameters specified in § 60.2110 or established under § 60.2115 and as specified in § 60.2170. Use 3-hour block average values to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under § 60.2115. Operation above the established maximum, below the established minimum, or outside the allowable range of the operating limits specified in paragraph (a) of this section constitutes a deviation from your operating limits established under this subpart, except during performance tests conducted to determine compliance with the emission and operating limits or to establish new operating limits. Operating limits are confirmed or reestablished during performance tests.

(d) You must burn only the same types of waste and fuels used to establish subcategory applicability (for energy recovery units) and operating limits during the performance test.

(e) For energy recovery units, incinerators, and small remote units, you must perform an annual visual emissions test for ash handling.

(f) For energy recovery units, you must conduct an annual performance test for opacity using EPA Reference Method 9 at 40 CFR part 60 (except where particulate matter CEMS or continuous parameter monitoring system are used) and the pollutants listed in table 6 of this subpart.

(g) You may elect to demonstrate continuous compliance with the carbon monoxide emission limit using a carbon monoxide CEMS according to the following requirements:

(1) You must measure emissions according to § 60.13 to calculate 1-hour arithmetic averages, corrected to 7 percent oxygen. CEMS data during startup and shutdown, as defined in this subpart, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. You must demonstrate initial compliance with the carbon monoxide emissions limit using a 30-day rolling average of these 1-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown as defined in this subpart, calculated using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7 of this part.

(2) Operate the carbon monoxide CEMS in accordance with the requirements of performance specification 4A of appendix B of this part and quality assurance procedure 1 of appendix F of this part.

(h) For waste-burning kilns, demonstrate continuous compliance with the particulate matter emissions limit using a particulate matter CEMS according to the procedures in § 60.2165(n). Energy recovery units with design heat input capacities greater than or equal to 250 MMBtu/hr may elect to demonstrate continuous compliance with the particulate matter emissions limit using a particulate matter CEMS according to the procedures in § 60.2165(n) instead of the particulate matter continuous parameter monitoring system (CPMS) specified in § 60.2145.

(i) For energy recovery units with design heat input capacities greater than or equal to 10 MMBtu/hour and less than 250 MMBtu/hr, you must install, operate, certify and maintain a continuous opacity monitoring system (COMS) according to the procedures in § 60.2165.

(j) For waste-burning kilns, you must conduct an annual performance test for cadmium, lead, dioxins/furans and hydrogen chloride as listed in table 7 of this subpart. You must determine compliance with hydrogen chloride using a hydrogen chloride CEMS if you do not use an acid gas wet scrubber. You must determine compliance with nitrogen oxides, sulfur dioxide, carbon monoxide, and particulate matter using CEMS. You must determine compliance with the mercury emissions limit using a mercury CEMS according to the following requirements:

(1) Operate a CEMS system in accordance with performance specification 12A of 40 CFR part 60, appendix B or a sorbent trap based integrated monitor in accordance with performance specification 12B of 40 CFR part 60, appendix B. The duration of the performance test must be a calendar month. For each calendar month in which the waste-burning kiln operates, hourly mercury concentration data, and stack gas volumetric flow rate data must be obtained.

(2) Owners or operators using a mercury CEMS must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the mercury mass emissions rate to the atmosphere according to the requirements of performance specifications 6 and 12A of 40 CFR part 60, appendix B, and quality assurance procedure 6 of 40 CFR part 60, appendix F.

(3) The owner or operator of a waste-burning kiln must demonstrate initial compliance by operating a mercury CEMS while the raw mill of the in-line kiln/raw mill is operating under normal conditions and while the raw mill of the in-line kiln/raw mill is not operating.

(k) If you use an air pollution control device to meet the emission limitations in this subpart, you must conduct an initial and annual inspection of the air pollution control device. The inspection must include, at a minimum, the following:

(1) Inspect air pollution control device(s) for proper operation.

(2) Develop a site-specific monitoring plan according to the requirements in paragraph (l) of this section. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under § 60.13(i).

(l) For each continuous monitoring system required in this section, you must develop and submit to the EPA Administrator for approval a site-specific monitoring plan according to the requirements of this paragraph (l) that addresses paragraphs (l)(1)(i) through (vi) of this section.

(1) You must submit this site-specific monitoring plan at least 60 days before your initial performance evaluation of your continuous monitoring system.

(i) Installation of the continuous monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device).

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer and the data collection and reduction systems.

(iii) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(iv) Ongoing operation and maintenance procedures in accordance with the general requirements of § 60.11(d).

(v) Ongoing data quality assurance procedures in accordance with the general requirements of § 60.13.

(vi) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 60.7(b), (c) introductory text, (c)(1), (c)(4), (d), (e), (f), and (g).

(2) You must conduct a performance evaluation of each continuous monitoring system in accordance with your site-specific monitoring plan.

(3) You must operate and maintain the continuous monitoring system in continuous operation according to the site-specific monitoring plan.

(m) If you have an operating limit that requires the use of a flow monitoring system, you must meet the requirements in paragraphs (l) and (m)(1) through (4) of this section.

(1) Install the flow sensor and other necessary equipment in a position that provides a representative flow.

(2) Use a flow sensor with a measurement sensitivity of no greater than 2 percent of the expected process flow rate.

(3) Minimize the effects of swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(4) Conduct a flow monitoring system performance evaluation in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(n) If you have an operating limit that requires the use of a pressure monitoring system, you must meet the requirements in paragraphs (l) and (n)(1) through (6) of this section.

(1) Install the pressure sensor(s) in a position that provides a representative measurement of the pressure (*e.g.,* PM scrubber pressure drop).

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a pressure sensor with a minimum tolerance of 1.27 centimeters of water or a minimum tolerance of 1 percent of the pressure monitoring system operating range, whichever is less.

(4) Perform checks at least once each process operating day to ensure pressure measurements are not obstructed (*e.g.,* check for pressure tap pluggage daily).

(5) Conduct a performance evaluation of the pressure monitoring system in

accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(6) If at any time the measured pressure exceeds the manufacturer's specified maximum operating pressure range, conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan and confirm that the pressure monitoring system continues to meet the performance requirements in your monitoring plan. Alternatively, install and verify the operation of a new pressure sensor.

(o) If you have an operating limit that requires a pH monitoring system, you must meet the requirements in paragraphs (l) and (o)(1) through (4) of this section.

(1) Install the pH sensor in a position that provides a representative measurement of scrubber effluent pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Conduct a performance evaluation of the pH monitoring system in accordance with your monitoring plan at least once each process operating day.

(4) Conduct a performance evaluation (including a two-point calibration with one of the two buffer solutions having a pH within 1 of the pH of the operating limit) of the pH monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than quarterly.

(p) If you have an operating limit that requires a secondary electric power monitoring system for an electrostatic precipitator, you must meet the requirements in paragraphs (l) and (p)(1) and (2) of this section.

(1) Install sensors to measure (secondary) voltage and current to the precipitator collection plates.

(2) Conduct a performance evaluation of the electric power monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(q) If you have an operating limit that requires the use of a monitoring system to measure sorbent injection rate (*e.g.,* weigh belt, weigh hopper, or hopper flow measurement device), you must meet the requirements in paragraphs (l) and (q)(1) and (2) of this section.

(1) Install the system in a position(s) that provides a representative measurement of the total sorbent injection rate.

(2) Conduct a performance evaluation of the sorbent injection rate monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(r) If you elect to use a fabric filter bag leak detection system to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (l) and (r)(1) through (5) of this section.

(1) Install a bag leak detection sensor(s) in a position(s) that will be representative of the relative or absolute particulate matter loadings for each exhaust stack, roof vent, or compartment (*e.g.,* for a positive pressure fabric filter) of the fabric filter.

(2) Use a bag leak detection system certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(3) Conduct a performance evaluation of the bag leak detection system in accordance with your monitoring plan and consistent with the guidance provided in EPA–454/R–98–015 (incorporated by reference, see § 60.17).

(4) Use a bag leak detection system equipped with a device to continuously record the output signal from the sensor.

(5) Use a bag leak detection system equipped with a system that will sound an alarm when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is observed readily by plant operating personnel.

(s) For facilities using a CEMS to demonstrate compliance with the sulfur dioxide emission limit, compliance with the sulfur dioxide emission limit may be demonstrated by using the CEMS specified in § 60.2165 to measure sulfur dioxide and calculating a 30-day rolling average emission concentration using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, Appendix A–7 of this part. The sulfur dioxide CEMS must be operated according to performance specification 2 in appendix B of this part and must follow the procedures and methods specified in this paragraph (s). For sources that have actual inlet emissions less than 100 parts per million dry volume, the relative accuracy criterion for inlet sulfur dioxide CEMS should be no greater than 20 percent of the mean value of the reference method test data in terms of the units of the emission standard, or 5 parts per million dry volume absolute value of the mean difference between the reference method and the CEMS, whichever is greater.

(1) During each relative accuracy test run of the CEMS required by performance specification 2 in appendix B of this part, collect sulfur dioxide and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the continuous emissions monitors and the test methods specified in paragraphs (s)(1)(i) and (ii) of this section.

(i) For sulfur dioxide, EPA Reference Method 6 or 6C, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 60.17) must be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 60.17), must be used.

(2) The span value of the CEMS at the inlet to the sulfur dioxide control device must be 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the unit subject to this rule. The span value of the CEMS at the outlet of the sulfur dioxide control device must be 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the unit subject to this rule.

(3) Conduct accuracy determinations quarterly and calibration drift tests daily in accordance with procedure 1 in appendix F of this part.

(t) For facilities using a CEMS to demonstrate continuous compliance with the nitrogen oxides emission limit, compliance with the nitrogen oxides emission limit may be demonstrated by using the CEMS specified in § 60.2165 to measure nitrogen oxides and calculating a 30-day rolling average emission concentration using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7 of this part. The nitrogen oxides CEMS must be operated according to performance specification 2 in appendix B of this part and must follow the procedures and methods specified in paragraphs (t)(1) through (5) of this section.

(1) During each relative accuracy test run of the CEMS required by performance specification 2 of appendix B of this part, collect nitrogen oxides and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the CEMS and the test methods specified in paragraphs (t)(1)(i) and (ii) of this section.

(i) For nitrogen oxides, EPA Reference Method 7 or 7E at 40 CFR part 60, appendix A–4 must be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B at 40 CFR part 60, appendix A–3, or as an alternative ANSI/ASME PTC 19–10.1981 (incorporated by reference, see § 60.17), as applicable, must be used.

(2) The span value of the CEMS must be 125 percent of the maximum estimated hourly potential nitrogen oxide emissions of the unit.

(3) Conduct accuracy determinations quarterly and calibration drift tests daily in accordance with procedure 1 in appendix F of this part.

(4) The owner or operator of an affected facility may request that compliance with the nitrogen oxides emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. If carbon dioxide is selected for use in diluent corrections, the relationship between oxygen and carbon dioxide levels must be established during the initial performance test according to the procedures and methods specified in paragraphs (t)(4)(i) through (t)(4)(iv) of this section. This relationship may be re-established during performance compliance tests.

(i) The fuel factor equation in Method 3B must be used to determine the relationship between oxygen and carbon dioxide at a sampling location. Method 3A or 3B, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 60.17), as applicable, must be used to determine the oxygen concentration at the same location as the carbon dioxide monitor.

(ii) Samples must be taken for at least 30 minutes in each hour.

(iii) Each sample must represent a 1-hour average.

(iv) A minimum of three runs must be performed.

(u) For facilities using a CEMS to demonstrate continuous compliance with any of the emission limits of this subpart, you must complete the following:

(1) Demonstrate compliance with the appropriate emission limit(s) using a 30-day rolling average, calculated using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7 of this part.

(2) Operate all CEMS in accordance with the applicable procedures under appendices B and F of this part.

(v) Use of the bypass stack at any time is an emissions standards deviation for particulate matter, HCl, Pb, Cd, Hg, NO_X, SO_2, and dioxin/furans.

(w) For energy recovery units with a design heat input capacity of 100 MMBtu per hour or greater that do not use a carbon monoxide CEMS, you must install, operate, and maintain an oxygen analyzer system as defined in § 60.2265 according to the procedures in paragraphs (w)(1) through (4) of this section.

(1) The oxygen analyzer system must be installed by the initial performance test date specified in § 60.2675.

(2) You must operate the oxygen trim system with the oxygen level set at the minimum percent oxygen by volume that is established as the operating limit for oxygen according to paragraph (w)(3) of this section.

(3) You must maintain the oxygen level such that it is not below the lowest hourly average oxygen concentration measured during the most recent CO performance test.

(4) You must calculate and record a 30-day rolling average oxygen concentration using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 of Appendix A–7 of this part.

(x) For energy recovery units with design heat input capacities greater than or equal to 250 MMBtu/hour, you must install, certify, maintain, and operate a PM CPMS monitoring emissions discharged to the atmosphere and record the output of the system as specified in paragraphs (x)(1) through (5) of this section. For other energy recovery units, you may elect to use PM CPMS operated in accordance with this section in lieu of using other CMS for monitoring PM compliance (*e.g.,* bag leak detectors, ESP secondary power, PM scrubber pressure).

(1) Install, certify, operate, and maintain your PM CPMS according to the procedures in your approved site-specific monitoring plan developed in accordance with § 60.2145(l) and (x)(1)(i) through (iii) of this section.

(i) The operating principle of the PM CPMS must be based on in-stack or extractive light scatter, light scintillation, or beta attenuation of the exhaust gas or representative exhaust gas sample. The reportable measurement output from the PM CPMS may be expressed as milliamps, stack concentration, or other raw data signal.

(ii) The PM CPMS must have a cycle time (*i.e.,* period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes.

(iii) The PM CPMS must be capable of detecting and responding to particulate matter concentrations of no greater than 0.5 mg/actual cubic meter.

(3) Collect PM CPMS hourly average output data for all energy recovery unit operating hours. Express the PM CPMS output as millamps, PM concentration, or other raw data signal value.

(4) Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit operating hours data (*e.g.,* milliamps, PM concentration, raw data signal).

22. Section 60.2150 is revised to read as follows:

§ 60.2150 By what date must I conduct the annual performance test?

You must conduct annual performance tests between 11 and 13 months of the previous performance test.

23. Section 60.2151 is added to read as follows:

§ 60.2151 By what date must I conduct the annual air pollution control device inspection?

On an annual basis (no more than 12 months following the previous annual air pollution control device inspection), you must complete the air pollution control device inspection as described in § 60.2141.

24. Section 60.2155 is revised to read as follows:

§ 60.2155 May I conduct performance testing less often?

(a) You must conduct annual performance tests according to the schedule specified in § 60.2150, with the following exceptions:

(1) You may conduct a repeat performance test at any time to establish new values for the operating limits to apply from that point forward, as specified in § 60.2160. The Administrator may request a repeat performance test at any time.

(2) You must repeat the performance test within 60 days of a process change, as defined in § 60.2265.

(3) If the initial or any subsequent performance test for any pollutant in table 1 or tables 5 through 8 of this subpart, as applicable, demonstrates that the emission level for the pollutant is no greater than the emission level specified in paragraph (a)(3)(i) or (ii) of this section, as applicable, and you are not required to conduct a performance test for the pollutant in response to a request by the Administrator in paragraph (a)(1) of this section or a process change in paragraph (a)(2) of this section, you may elect to skip conducting a performance test for the pollutant for the next 2 years. You must conduct a performance test for the pollutant during the third year and no more than 37 months following the previous performance test for the pollutant. For cadmium and lead, both cadmium and lead must be emitted at emission levels no greater than their respective emission levels specified in paragraph (a)(3)(i) of this section for you to qualify for less frequent testing under this paragraph.

(i) For particulate matter, hydrogen chloride, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead and

dioxins/furans, the emission level equal to 75 percent of the applicable emission limit in table 1 or tables 5 through 8 of this subpart, as applicable, to this subpart.

(ii) For fugitive emissions, visible emissions (of combustion ash from the ash conveying system) for 2 percent of the time during each of the three 1-hour observation periods.

(4) If you are conducting less frequent testing for a pollutant as provided in paragraph (a)(3) of this section and a subsequent performance test for the pollutant indicates that your CISWI unit does not meet the emission level specified in paragraph (a)(3)(i) or (ii) of this section, as applicable, you must conduct annual performance tests for the pollutant according to the schedule specified in paragraph (a) of this section until you qualify for less frequent testing for the pollutant as specified in paragraph (a)(3) of this section.

(b) [Reserved]

25. Section 60.2165 is amended by:

a. Revising paragraph (b)(6).

b. Revising paragraph (c).

c. Adding paragraphs (d) through (r).

The revisions and additions read as follows:

§ 60.2165 What monitoring equipment must I install and what parameters must I monitor?

* * * * *

(b) * * *

(6) The bag leak detection system must be equipped with an alarm system that will alert automatically an operator when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is observed easily by plant operating personnel.

* * * * *

(c) If you are using something other than a wet scrubber, activated carbon, selective non-catalytic reduction, or an electrostatic precipitator to comply with the emission limitations under § 60.2105, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 60.2115.

(d) If you use activated carbon injection to comply with the emission limitations in this subpart, you must measure the minimum mercury sorbent flow rate once per hour.

(e) If you use selective noncatalytic reduction to comply with the emission limitations, you must complete the following:

(1) Following the date on which the initial performance test is completed or is required to be completed under § 60.2125, whichever date comes first, ensure that the affected facility does not operate above the maximum charge rate, or below the minimum secondary chamber temperature (if applicable to your CISWI unit) or the minimum reagent flow rate measured as 3-hour block averages at all times.

(2) Operation of the affected facility above the maximum charge rate, below the minimum secondary chamber temperature and below the minimum reagent flow rate simultaneously constitute a violation of the nitrogen oxides emissions limit.

(f) If you use an electrostatic precipitator to comply with the emission limits of this subpart, you must monitor the secondary power to the electrostatic precipitator collection plates and maintain the 3-hour block averages at or above the operating limits established during the mercury or particulate matter performance test.

(g) For waste-burning kilns not equipped with a wet scrubber, in place of hydrogen chloride testing with EPA Method 321 at 40 CFR part 63, appendix A, an owner or operator must install, calibrate, maintain, and operate a CEMS for monitoring hydrogen chloride emissions discharged to the atmosphere and record the output of the system. To demonstrate continuous compliance with the hydrogen chloride emissions limit for units other than waste-burning kilns not equipped with a wet scrubber, a facility may substitute use of a hydrogen chloride CEMS for conducting the hydrogen chloride annual performance test, monitoring the minimum hydrogen chloride sorbent flow rate, and monitoring the minimum scrubber liquor pH.

(h) To demonstrate continuous compliance with the particulate matter emissions limit, a facility may substitute use of a particulate matter CEMS for conducting the PM annual performance test and monitoring the minimum pressure drop across the wet scrubber, if applicable.

(i) To demonstrate continuous compliance with the dioxin/furan emissions limit, a facility may substitute use of a continuous automated sampling system for the dioxin/furan annual performance test. You must record the output of the system and analyze the sample according to EPA Method 23 at 40 CFR part 60, appendix A–7 of this part. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to dioxin/furan from continuous monitors is published in the **Federal Register**. The owner or operator who elects to continuously sample dioxin/furan emissions instead of sampling and testing using EPA Method 23 at 40 CFR part 60, appendix A–7 must install, calibrate, maintain, and operate a continuous automated sampling system and must comply with the requirements specified in § 60.58b(p) and (q).

(j) To demonstrate continuous compliance with the mercury emissions limit, a facility may substitute use of a continuous automated sampling system for the mercury annual performance test. You must record the output of the system and analyze the sample at set intervals using any suitable determinative technique that can meet performance specification 12B. The owner or operator who elects to continuously sample mercury emissions instead of sampling and testing using EPA Reference Method 29 or 30B at 40 CFR part 60, appendix A–8 of this part, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 60.17), or an approved alternative method for measuring mercury emissions, must install, calibrate, maintain, and operate a continuous automated sampling system and must comply with performance specification 12A and quality assurance procedure 5, as well as the requirements specified in § 60.58b(p) and (q).

(k) To demonstrate continuous compliance with the nitrogen oxides emissions limit, a facility may substitute use of a CEMS for the nitrogen oxides annual performance test to demonstrate compliance with the nitrogen oxides emissions limits.

(1) Install, calibrate, maintain, and operate a CEMS for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 2 of appendix B of this part, the quality assurance procedure one of appendix F of this part and the procedures under § 60.13 must be followed for installation, evaluation, and operation of the CEMS.

(2) Following the date that the initial performance test for nitrogen oxides is completed or is required to be completed under § 60.2125, compliance with the emission limit for nitrogen oxides required under § 60.52b(d) must be determined based on the 30-day rolling average of the hourly emission concentrations using CEMS outlet data. The 1-hour arithmetic averages must be expressed in parts per million by volume (dry basis) and used to calculate the 30-day rolling average concentrations. The 1-hour arithmetic averages must be calculated using the data points required under § 60.13(e)(2).

(l) To demonstrate continuous compliance with the sulfur dioxide emissions limit, a facility may substitute use of a continuous automated sampling system for the sulfur dioxide annual performance test to demonstrate compliance with the sulfur dioxide emissions limits.

(1) Install, calibrate, maintain, and operate a CEMS for measuring sulfur dioxide emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 2 of appendix B of this part, the quality assurance requirements of procedure one of appendix F of this part and procedures under § 60.13 must be followed for installation, evaluation, and operation of the CEMS.

(2) Following the date that the initial performance test for sulfur dioxide is completed or is required to be completed under § 60.2125, compliance with the sulfur dioxide emission limit may be determined based on the 30-day rolling average of the hourly arithmetic average emission concentrations using CEMS outlet data. The 1-hour arithmetic averages must be expressed in parts per million corrected to 7 percent oxygen (dry basis) and used to calculate the 30-day rolling average emission concentrations and daily geometric average emission percent reductions. The 1-hour arithmetic averages must be calculated using the data points required under § 60.13(e)(2).

(m) For energy recovery units over 10 MMBtu/hr but less than 250 MMBtu/hr design heat input that do not use a wet scrubber, fabric filter with bag leak detection system, or particulate matter CEMS, you must install, operate, certify, and maintain a continuous opacity monitoring system according to the procedures in paragraphs (m)(1) through (5) of this section by the compliance date specified in § 60.2105. Energy recovery units that use a CEMS to demonstrate initial and continuing compliance according to the procedures in § 60.2165(n) are not required to install a continuous opacity monitoring system and must perform the annual performance tests for the opacity consistent with § 60.2145(f).

(1) Install, operate, and maintain each continuous opacity monitoring system according to performance specification 1 of 40 CFR part 60, appendix B.

(2) Conduct a performance evaluation of each continuous opacity monitoring system according to the requirements in § 60.13 and according to PS–1 of 40 CFR part 60, appendix B.

(3) As specified in § 60.13(e)(1), each continuous opacity monitoring system must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(4) Reduce the continuous opacity monitoring system data as specified in § 60.13(h)(1).

(5) Determine and record all the 6-minute averages (and 1-hour block averages as applicable) collected.

(n) For energy recovery units with design capacities greater than 250 MMBtu/hr, in place of particulate matter testing with EPA Method 5 at 40 CFR part 60, appendix A–3, an owner or operator may install, calibrate, maintain, and operate a CEMS for monitoring particulate matter emissions discharged to the atmosphere and record the output of the system. For waste-burning kilns, a CEMS for monitoring particulate matter emissions is required. The owner or operator of an affected facility who continuously monitors particulate matter emissions instead of conducting performance testing using EPA Method 5 at 40 CFR part 60, appendix A–3 must install, calibrate, maintain and operate a CEMS and must comply with the requirements specified in paragraphs (n)(1) through (n)(14) of this section.

(1) Notify the Administrator 1 month before starting use of the system.

(2) Notify the Administrator 1 month before stopping use of the system.

(3) The monitor must be installed, evaluated, and operated in accordance with the requirements of performance specification 11 of appendix B of this part and quality assurance requirements of procedure two of appendix F of this part and § 60.13. Use Method 5 or Method 5I of Appendix A of this part for the PM CEMS correlation testing.

(4) The initial performance evaluation must be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.2125 or within 180 days of notification to the Administrator of use of the continuous monitoring system if the owner or operator was previously determining compliance by Method 5 performance tests, whichever is later.

(5) The owner or operator of an affected facility may request that compliance with the particulate matter emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established according to the procedures and methods specified in § 60.2145(s)(5)(i) through (iv).

(6) The owner or operator of an affected facility must conduct an initial performance test for particulate matter emissions as required under § 60.2125. Compliance with the particulate matter emission limit must be determined by using the CEMS specified in paragraph (n) of this section to measure particulate matter and calculating a 30-day rolling average emission concentration using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7.

(7) Compliance with the particulate matter emission limit must be determined based on the 30-day rolling average calculated using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7 from the 1-hour arithmetic average CEMS outlet data.

(8) At a minimum, valid continuous monitoring system hourly averages must be obtained as specified in § 60.2170(e).

(9) The 1-hour arithmetic averages required under paragraph (n)(7) of this section must be expressed in milligrams per dry standard cubic meter corrected to 7 percent oxygen (dry basis) and must be used to calculate the 30-day rolling average emission concentrations. The 1-hour arithmetic averages must be calculated using the data points required under § 60.13(e)(2).

(10) All valid CEMS data must be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (n)(8) of this section are not met.

(11) The CEMS must be operated according to performance specification 11 in appendix B of this part.

(12) During each relative accuracy test run of the CEMS required by performance specification 11 in appendix B of this part, particulate matter and oxygen (or carbon dioxide) data must be collected concurrently (or within a 30- to 60-minute period) by both the continuous emissions monitors and the following test methods.

(i) For particulate matter, EPA Reference Method 5 must be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B, as applicable, must be used.

(13) Quarterly accuracy determinations and daily calibration drift tests must be performed in accordance with procedure 2 in appendix F of this part.

(14) When particulate matter emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data must be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 at 40 CFR part 60, appendix A–7 to provide, as necessary, valid emissions data for a minimum of 85 percent of the hours per day, 90 percent of the hours

per calendar quarter, and 95 percent of the hours per calendar year that the affected facility is operated and combusting waste.

(o) To demonstrate continuous compliance with the carbon monoxide emissions limit, you may elect to use a continuous automated sampling system.

(1) Install, calibrate, maintain, and operate a CEMS for measuring carbon monoxide emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 4B of appendix B of this part, the quality assurance procedure 1 of appendix F of this part and the procedures under § 60.13 must be followed for installation, evaluation, and operation of the CEMS.

(2) Following the date that the initial performance test for carbon monoxide is completed or is required to be completed under § 60.2140, compliance with the carbon monoxide emission limit may be determined based on the 30-day rolling average of the hourly arithmetic average emission concentrations, including CEMS data during startup and shutdown as defined in this subpart, using CEMS outlet data. Except for CEMS data during startup and shutdown, as defined in this subpart, the 1-hour arithmetic averages must be expressed in parts per million corrected to 7 percent oxygen (dry basis) and used to calculate the 30-day rolling average emission concentrations. CEMS data during startup and shutdown, as defined in this subpart, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. The 1-hour arithmetic averages must be calculated using the data points required under § 60.13(e)(2).

(p) The owner/operator of an affected source with a bypass stack shall install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of the bypass stack including date, time and duration.

(q) For energy recovery units with a design heat input capacity of 100 MMBtu per hour or greater that do not use a carbon monoxide CEMS, you must install, operate, and maintain a oxygen analyzer system as defined in § 60.2265 according to the procedures in paragraphs (q)(1) through (4) of this section.

(1) The oxygen analyzer system must be installed by the initial performance test date specified in § 60.2675.

(2) You must operate the oxygen trim system with the oxygen level set at the minimum percent oxygen by volume that is established as the operating limit for oxygen according to paragraph (q)(3) of this section.

(3) You must maintain the oxygen level such that it is not below the lowest hourly average oxygen concentration measured during the most recent CO performance test.

(4) You must calculate and record a 30-day rolling average oxygen concentration using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 of Appendix A–7 of this part.

(r) For energy recovery units with design heat input capacities greater than or equal to 250 MMBtu/hour, you must install, certify, maintain, and operate a PM CPMS monitoring emissions discharged to the atmosphere and record the output of the system as specified in paragraphs (r)(1) through (5) of this section. If you elect to use a particulate matter CEMS as specified in paragraph (n) of this section, you are not required to use a PM CPMS to monitor particulate matter emissions. For other energy recovery units, you may elect to use PM CPMS operated in accordance with this section in lieu of using other CMS for monitoring PM compliance (*e.g.,* bag leak detectors, ESP secondary power, PM scrubber pressure)

(1) Install, certify, operate, and maintain your PM CPMS according to the procedures in your approved site-specific monitoring plan developed in accordance with § 60.2145(l) and (r)(1)(i) through (iii) of this section.

(i) The operating principle of the PM CPMS must be based on in-stack or extractive light scatter, light scintillation, or beta attenuation of the exhaust gas or representative exhaust gas sample. The reportable measurement output from the PM CPMS may be expressed as milliamps, stack concentration, or other raw data signal.

(ii) The PM CPMS must have a cycle time (*i.e.,* period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes.

(iii) The PM CPMS must be capable of detecting and responding to particulate matter concentrations of no greater than 0.5 mg/actual cubic meter.

(3) Collect PM CPMS hourly average output data for all energy recovery unit operating hours. Express the PM CPMS output as millamps, PM concentration, or other raw data signal value.

(4) Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit operating hours data (*e.g.,* milliamps, PM concentration, raw data signal).

26. Section 60.2170 is revised to read as follows:

§ 60.2170 Is there a minimum amount of monitoring data I must obtain?

For each continuous monitoring system required or optionally allowed under § 60.2165, you must collect data according to this section:

(a) You must operate the monitoring system and collect data at all required intervals at all times compliance is required except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods (as specified in 60.2210(o) of this part), and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments). A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to effect monitoring system repairs in response to monitoring system malfunctions or out-of-control periods and to return the monitoring system to operation as expeditiously as practicable.

(b) You may not use data recorded during monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(c) Except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments, failure to collect required data is a deviation of the monitoring requirements.

27. Section 60.2175 is amended by:

a. Revising the introductory text.

b. Revising paragraphs (b)(5) and (e).

c. Removing and reserving paragraphs (c) and (d).

d. Adding paragraphs (o) through (v).

§ 60.2175 What records must I keep?

You must maintain the items (as applicable) as specified in paragraphs (a), (b), and (e) through (u) of this section for a period of at least 5 years:

* * * * *

(b) * * *

(5) For affected CISWI units that establish operating limits for controls other than wet scrubbers under § 60.2110(d) through (f) or § 60.2115, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

* * * * *

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in table 2 of this subpart or a deviation from other operating limits established under § 60.2110(d) through (f) or § 60.2115 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

* * * * *

(o) Maintain records of the annual air pollution control device inspections that are required for each CISWI unit subject to the emissions limits in table 1 of this subpart or tables 5 through 8 of this subpart, any required maintenance, and any repairs not completed within 10 days of an inspection or the timeframe established by the state regulatory agency.

(p) For continuously monitored pollutants or parameters, you must document and keep a record of the following parameters measured using continuous monitoring systems.

(1) All 6-minute average levels of opacity.

(2) All 1-hour average concentrations of sulfur dioxide emissions.

(3) All 1-hour average concentrations of nitrogen oxides emissions.

(4) All 1-hour average concentrations of carbon monoxide emissions. You must indicate which data are CEMS data during startup and shutdown.

(5) All 1-hour average concentrations of particulate matter emissions.

(6) All 1-hour average concentrations of mercury emissions.

(7) All 1-hour average concentrations of hydrogen chloride emissions.

(8) All 1-hour average percent oxygen concentrations.

(9) All 1-hour average PM CPMS readings or particulate matter continuous emissions monitor outputs.

(q) Records indicating use of the bypass stack, including dates, times, and durations.

(r) If you choose to stack test less frequently than annually, consistent with § 60.2155(a) through (c), you must keep annual records that document that your emissions in the previous stack test(s) were less than 75 percent of the applicable emission limit and document that there was no change in source operations including fuel composition and operation of air pollution control equipment that would cause emissions of the relevant pollutant to increase within the past year.

(s) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(t) Records of all required maintenance performed on the air pollution control and monitoring equipment.

(u) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 60.11(d), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(v) For operating units that combust non-hazardous secondary materials that have been determined not to be solid waste pursuant to § 241.3(b)(1) of this chapter, you must keep a record which documents how the secondary material meets each of the legitimacy criteria. If you combust a fuel that has been processed from a discarded non-hazardous secondary material pursuant to § 241.3(b)(4) of this chapter, you must keep records as to how the operations that produced the fuel satisfies the definition of processing in § 241.2 of this chapter. If the fuel received a non-waste determination pursuant to the petition process submitted under § 241.3(c) of this chapter, you must keep a record that documents how the fuel satisfies the requirements of the petition process.

28. Section 60.2210 is amended by revising paragraph (e) and adding paragraphs (k) through (p) to read as follows:

§ 60.2210 What information must I include in my annual report?

* * * * *

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period.

* * * * *

(k) If you had a malfunction during the reporting period, the compliance report must include the number, duration, and a brief description for each type of malfunction that occurred during the reporting period and that caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 60.11(d), including actions taken to correct a malfunction.

(l) For each deviation from an emission or operating limitation that occurs for a CISWI unit for which you are not using a continuous monitoring system to comply with the emission or operating limitations in this subpart, the annual report must contain the following information.

(1) The total operating time of the CISWI unit at which the deviation occurred during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(m) If there were periods during which the continuous monitoring system, including the CEMS, was out of control as specified in paragraph (o) of this section, the annual report must contain the following information for each deviation from an emission or operating limitation occurring for a CISWI unit for which you are using a continuous monitoring system to comply with the emission and operating limitations in this subpart.

(1) The date and time that each malfunction started and stopped.

(2) The date, time, and duration that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each continuous monitoring system was out-of-control, including start and end dates and hours and descriptions of corrective actions taken.

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of continuous monitoring system downtime during the reporting period, and the total duration of continuous monitoring system downtime as a percent of the total operating time of the CISWI unit at which the continuous monitoring system downtime occurred during that reporting period.

(8) An identification of each parameter and pollutant that was monitored at the CISWI unit.

(9) A brief description of the CISWI unit.

(10) A brief description of the continuous monitoring system.

(11) The date of the latest continuous monitoring system certification or audit.

(12) A description of any changes in continuous monitoring system, processes, or controls since the last reporting period.

(n) If there were periods during which the continuous monitoring system, including the CEMS, was not out of control as specified in paragraph (o) of this section, a statement that there were not periods during which the continuous monitoring system was out of control during the reporting period.

(o) A continuous monitoring system is out of control in accordance with the procedure in 40 CFR part 60, appendix F of this part, as if any of the following occur.

(1) The zero (low-level), mid-level (if applicable), or high-level calibration drift exceeds two times the applicable calibration drift specification in the applicable performance specification or in the relevant standard.

(2) The continuous monitoring system fails a performance test audit (*e.g.,* cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit.

(3) The continuous opacity monitoring system calibration drift exceeds two times the limit in the applicable performance specification in the relevant standard.

(p) For energy recovery units, include the annual heat input and average annual heat input rate of all fuels being burned in the unit to verify which subcategory of energy recovery unit applies.

29. Section 60.2220 is amended by revising paragraph (c) and removing paragraphs (e) and (f).

The revision reads as follows:

§ 60.2220 What must I include in the deviation report?

* * * * *

(c) Durations and causes of the following:

(1) Each deviation from emission limitations or operating limits and your corrective actions.

(2) Bypass events and your corrective actions.

* * * * *

30. Section 60.2230 is revised to read as follows:

§ 60.2230 Are there any other notifications or reports that I must submit?

(a) Yes. You must submit notifications as provided by § 60.7.

(b) If you cease combusting solid waste but continue to operate, you must provide 30 days prior notice of the effective date of the waste-to-fuel switch, consistent with § 60.2145(a). The notification must identify:

(1) The name of the owner or operator of the CISWI unit, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

(2) The currently applicable subcategory under this subpart, and any 40 CFR part 63 subpart and subcategory that will be applicable after you cease combusting solid waste;

(3) The fuel(s), non-waste material(s) and solid waste(s) the CISWI unit is currently combusting and has combusted over the past 6 months, and the fuel(s) or non-waste materials the unit will commence combusting;

(4) The date on which you became subject to the currently applicable emission limits;

(5) The date upon which you will cease combusting solid waste, and the date (if different) that you intend for any new requirements to become applicable (*i.e.,* the effective date of the waste-to-fuel switch), consistent with paragraphs (2) and (3)) of this section.

31. Section 60.2235 is revised to read as follows:

§ 60.2235 In what form can I submit my reports?

(a) Submit initial, annual and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

(b) As of January 1, 2012, and within 60 days after the date of completing each performance test, as defined in § 63.2, conducted to demonstrate compliance with this subpart, you must submit relative accuracy test audit (*i.e.,* reference method) data and performance test (*i.e.,* compliance test) data, except opacity data, electronically to EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/erttool.html/*) or other compatible electronic spreadsheet. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

32. Section 60.2242 is revised to read as follows:

§ 60.2242 Am I required to apply for and obtain a Title V operating permit for my unit?

Yes. Each CISWI unit and air curtain incinerator subject to standards under this subpart must operate pursuant to a permit issued under section 129(e) and Title V of the Clean Air Act.

33. Section 60.2250 is revised to read as follows:

§ 60.2250 What are the emission limitations for air curtain incinerators?

Within 60 days after your air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its initial startup, you must meet the two limitations specified in paragraphs (a) and (b) of this section.

(a) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values), except as described in paragraph (b) of this section.

(b) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) during the startup period that is within the first 30 minutes of operation.

34. Section 60.2260 is amended by revising paragraph (d) to read as follows:

§ 60.2260 What are the recordkeeping and reporting requirements for air curtain incinerators?

* * * * *

(d) You must submit the results (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) of the initial opacity tests no later than 60 days following the initial test. Submit annual opacity test results within 12 months following the previous report.

* * * * *

35. Section 60.2265 is amended by:

a. Adding definitions for ''Affirmative defense'', ''Annual heat input'', ''Average annual heat input rate'', ''Burn-off oven'', ''Bypass stack'', ''CEMS data during startup and shutdown'', ''Chemical recovery unit'', ''Continuous monitoring system'', ''Energy recovery unit'', ''Energy recovery unit designed to burn biomass (Biomass)'', ''Energy recovery unit designed to burn coal (Coal)'', ''Energy recovery unit designed to burn solid materials (Solids)'', ''Foundry sand thermal reclamation unit'', ''Homogeneous wastes'' ''Incinerator'', ''Kiln'', ''Laboratory analysis unit'', ''Minimum voltage or amperage'', ''Opacity'', ''Operating day'', ''Oxygen analyzer system'', ''Oxygen trim system'', ''Performance evaluation'', ''Performance test'', ''Process change'', ''Raw mill'', ''Small remote incinerator'', ''Soil treatment unit'', ''Solid waste incineration unit'', ''Space heater'' and ''Waste-burning kiln'', in alphabetical order.

b. Revising the definition for ''Commercial and industrial solid waste incineration (CISWI) unit'', ''Cyclonic

burn barrel'', ''dioxin/furans'', ''Modification or modified CISWI unit'', and ''Wet scrubber''.

c. Removing paragraph (3) of the definition for ''Deviation.''

d. Removing the definition for ''Agricultural waste'', ''Commercial or industrial waste'', and ''Solid waste''. The additions and revisions read as follows:

§ 60.2265 What definitions must I know?

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

Annual heat input means the heat input for the 12 months preceding the compliance demonstration.

Average annual heat input rate means annual heat input divided by the hours of operation for the 12 months preceding the compliance demonstration.

* * * * *

Burn-off oven means any rack reclamation unit, part reclamation unit, or drum reclamation unit. A burn-off oven is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Bypass stack means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

* * * * *

CEMS data during startup and shutdown means carbon monoxide CEMS data collected during the first 4 hours of operation of energy recovery unit startup from a cold start and the hour of operation following the cessation of waste material being fed to the energy recovery unit during a unit shutdown.

Chemical recovery unit means combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. A chemical recovery unit is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart. The following seven types of units are considered chemical recovery units:

(1) Units burning only pulping liquors (*i.e.,* black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(3) Units burning only wood or coal feedstock for the production of charcoal.

(4) Units burning only manufacturing byproduct streams/residue containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(7) Units burning only photographic film to recover silver.

* * * * *

Commercial and industrial solid waste incineration (CISWI) unit means any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding 6 months, any solid waste as that term is defined in 40 CFR part 241. If the operating unit burns materials other than traditional fuels as defined in § 241.2 that have been discarded, and you do not keep and produce records as required by § 60.2175(v), the material is a solid waste and the operating unit is a CISWI unit. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the solid waste hopper (if applicable) and extends through two areas: The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system.

* * * * *

Continuous monitoring system (CMS) means the total equipment, required under the emission monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters. A particulate matter continuous parameter monitoring system (PM CPMS) is a type of CMS.

* * * * *

Cyclonic burn barrel means a combustion device for waste materials that is attached to a 55 gallon, openhead drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air. A cyclonic burn barrel is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements.

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

Dioxins/furans means tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

* * * * *

Energy recovery unit means a combustion unit combusting solid waste (as that term is defined by the Administrator under the Resource Conservation and Recovery Act in 40 CFR part 241) for energy recovery. Energy recovery units include units that would be considered boilers and process heaters if they did not combust solid waste.

Energy recovery unit designed to burn biomass (Biomass) means an energy recovery unit that burns solid waste, biomass, and non-coal solid materials but less than 10 percent coal, on a heat input basis on an annual average, either alone or in combination with liquid waste, liquid fuel or gaseous fuels.

Energy recovery unit designed to burn coal (Coal) means an energy recovery unit that burns solid waste and at least 10 percent coal on a heat input basis on an annual average, either alone or in combination with liquid waste, liquid fuel or gaseous fuels.

Energy recovery unit designed to burn liquid waste materials and gas (Liquid/gas) means an energy recovery unit that burns a liquid waste with liquid or gaseous fuels not combined with any solid fuel or waste materials.

Energy recovery unit designed to burn solid materials (Solids) includes energy

recovery units designed to burn coal and energy recovery units designed to burn biomass.

* * * * *

Foundry sand thermal reclamation unit means a type of part reclamation unit that removes coatings that are on foundry sand. A foundry sand thermal reclamation unit is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

* * * * *

Homogeneous wastes are stable, consistent in formulation, have known fuel properties, have a defined origin, have predictable chemical and physical attributes, and result in consistent combustion characteristics and have a consistent emissions profile.

Incinerator means any furnace used in the process of combusting solid waste (as that term is defined by the Administrator under 40 CFR part 241) for the purpose of reducing the volume of the waste by removing combustible matter. Incinerator designs include single chamber and two-chamber.

Kiln means an oven or furnace, including any associated preheater or precalciner devices, used for processing a substance by burning, firing or drying. Kilns include cement kilns that produce clinker by heating limestone and other materials for subsequent production of Portland Cement.

Laboratory analysis unit means units that burn samples of materials for the purpose of chemical or physical analysis. A laboratory analysis unit is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

* * * * *

Minimum voltage or amperage means 90 percent of the lowest test-run average voltage or amperage to the electrostatic precipitator measured during the most recent particulate matter or mercury performance test demonstrating compliance with the applicable emission limits.

Modification or modified CISWI unit means a CISWI unit that has been changed later than June 1, 2001, and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(2) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Operating day means a 24-hour period between 12:00 midnight and the following midnight during which any amount of solid waste is combusted at any time in the CISWI unit.

Oxygen analyzer system means all equipment required to determine the oxygen content of a gas stream and used to monitor oxygen in the boiler flue gas or firebox. This definition includes oxygen trim systems. The source owner or operator is responsible to install, calibrate, maintain, and operate the oxygen analyzer system in accordance with the manufacturer's recommendations.

Oxygen trim system means a system of monitors that is used to maintain excess air at the desired level in a combustion device. A typical system consists of a flue gas oxygen and/or carbon monoxide monitor that automatically provides a feedback signal to the combustion air controller.

* * * * *

Performance evaluation means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the continuous monitoring system data.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Process change means a significant permit revision, but only with respect to those pollutant-specific emission units for which the proposed permit revision is applicable, including but not limited to a change in the air pollution control devices used to comply with the emission limits for the affected CISWI unit (*e.g.,* change in the sorbent used for activated carbon injection).

* * * * *

Raw mill means a ball and tube mill, vertical roller mill or other size reduction equipment, that is not part of an in-line kiln/raw mill, used to grind feed to the appropriate size. Moisture may be added or removed from the feed during the grinding operation. If the raw mill is used to remove moisture from feed materials, it is also, by definition, a raw material dryer. The raw mill also includes the air separator associated with the raw mill.

* * * * *

Small, remote incinerator means an incinerator that combusts solid waste (as that term is defined by the Administrator in 40 CFR part 241) and combusts 3 tons per day or less solid waste and is more than 25 miles driving distance to the nearest municipal solid waste landfill.

Soil treatment unit means a unit that thermally treats petroleum contaminated soils for the sole purpose of site remediation. A soil treatment unit may be direct-fired or indirect fired. A soil treatment unit is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Solid waste incineration unit means a distinct operating unit of any facility which combusts any solid waste (as that term is defined by the Administrator in 40 CFR part 241) material from commercial or industrial establishments or the general public (including single and multiple residences, hotels and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act. The term ''solid waste incineration unit'' does not include:

(1) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(2) Qualifying small power production facilities, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 769(17)(C)), or qualifying cogeneration facilities, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or

(3) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes, and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

Space heater means a usually portable appliance for heating a relatively small area. A space heater is not an incinerator, waste-burning kiln, an

energy recovery unit or a small, remote incinerator under this subpart.

* * * * *

Waste-burning kiln means a kiln that is heated, in whole or in part, by combusting solid waste (as that term is defined by the Administrator in 40 CFR part 241). A waste-burning kiln does not include a kiln that is feeding non-hazardous secondary ingredients exclusively into the cold end of the kiln.

Wet scrubber means an add-on air pollution control device that uses an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

* * * * *

36. Table 1 of subpart CCCC is revised to read as follows:

TABLE 1 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR CISWI UNITS FOR WHICH CONSTRUCTION IS COMMENCED AFTER NOVEMBER 30, 1999, BUT NO LATER THAN JUNE 4, 2010, OR FOR WHICH MODIFICATION OR RECONSTRUCTION IS COMMENCED ON OR AFTER JUNE 1, 2001, BUT NO LATER THAN

[*Date 6 months after publication of the Final Rule in the* **Federal Register**].

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
Cadmium	0.004 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Carbon Monoxide	157 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxin/Furan (toxic equivalency basis).	0.41 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters per run).	Performance test (Method 23 of appendix A–7 of this part).
Hydrogen Chloride	62 parts per million by dry volume	3-run average (For Method 26, collect a minimum volume of 120 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.04 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Mercury	0.47 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008),[b] collect a minimum volume of 1 dry standard cubic meter per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[b]
Opacity	10 percent	Three 1-hour blocks consisting of ten 6-minute averages opacity values.	Performance test (Method 9 at 40 CFR part 60, appendix A–4).
Nitrogen Oxides	388 parts per million by dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter	70 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or A–8).
Sulfur Dioxide	20 parts per million by dry volume	3-run average (For Method 6, collect a minimum volume of 20 liters per run. For Method 6C, collect sample for a minimum duration of 1 hour per run).	Performance test (Method 6 or 6C at 40 CFR part 60, appendix A–4.

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.
[b] Incorporated by reference, see § 60.17.

37. Table 4 of subpart CCCC is amended by revising the entry for ''Annual Report'' and ''Emission limitation or operating limit deviation report.''

TABLE 4 TO SUBPART CCCC OF PART 60—SUMMARY OF REPORTING REQUIREMENTS [a]

Report	Due date	Contents	Reference
*	* * *	* *	*
Annual report	No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	• Name and address • Statement and signature by responsible official. • Date of report ..... • Values for the operating limits ..... • Highest recorded 3-hour average and the lowest 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported. • If a performance test was conducted during the reporting period, the results of the test. • If a performance test was not conducted during the reporting period, a statement that the requirements of § 60.2155(a) were met. • Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks. • If you are conducting performance tests once every 3 years consistent with § 60.2155(a), the date of the last 2 performance tests, a comparison of the emission level you achieved in the last 2 performance tests to the 75 percent emission limit threshold required in § 60.2155(a) and a statement as to whether there have been any operational changes since the last performance test that could increase emissions.	§§ 60.2205 and 60.2210.
*	* * *	* *	*
Emission limitation or operating limit deviation report.	By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year.	• Dates and times of deviation. • Averaged and recorded data for those dates. • Duration and causes of each deviation and the corrective actions taken. • Copy of operating limit monitoring data and any test reports. • Dates, times and causes for monitor downtime incidents.	§ 60.2215 and 60.2220.

[a] This table is only a summary, see the referenced sections of the rule for the complete requirements.

38. Table 5 to Subpart CCCC is added to read as follows:

TABLE 5 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR INCINERATORS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER

[*Date 6 months after publication of the Final Rule in the* **Federal Register**]

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
Cadmium	0.0023 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meter per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8 of this part). Use ICPMS for the analytical finish.
Carbon Monoxide	12 parts per million by dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxin/furan (Total Mass Basis)	0.58 nanograms per dry standard cubic meter [c].	3-run average (collect a minimum volume of 4 dry standard cubic meter per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxin/furan (toxic equivalency basis).	0.13 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meter per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).

TABLE 5 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR INCINERATORS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER—Continued

[*Date 6 months after publication of the Final Rule in the* **Federal Register**]

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
Hydrogen Chloride	0.091 part per million by dry volume.	3-run average (For Method 26, collect a minimum volume of 360 liters per run. For Method 26A, collect a minimum volume of 3 dry standard cubic meter per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.0019 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meter per run).	Performance test (Method 29 of appendix A–8 at 40 CFR part 60). Use ICPMS for the analytical finish.
Mercury	0.00084 milligrams per dry standard cubic meter [c].	3-run average (collect enough volume to meet a detection limit data quality objective of 0.03 μg/dry standard cubic meter).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008) [b].
Nitrogen Oxides	23 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter (filterable)	18 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters per run).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8 at 40 CFR part 60).
Sulfur dioxide	11 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6C at 40 CFR part 60, appendix A–4.
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).

[a] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the Total Mass Limit or the toxic equivalency basis limit.

[b] Incorporated by reference, see § 60.17.

[c] If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to § 60.2155 if all of the other provision of § 60.2155 are met. For all other pollutants that do not contain a footnote "c", your performance tests for this pollutant for at least 2 consecutive years must show that your emissions are at or 75 percent of this limit in order to qualify for skip testing.

39. Table 6 to Subpart CCCC is added to read as follows:

TABLE 6 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR ENERGY RECOVERY UNITS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER

[*Date 6 months after publication of the Final Rule in the* **Federal Register**]

For the air pollutant	You must meet this emission limitation [a]		Using this averaging time	And determining compliance using this method
	Liquid/Gas	Solids		
Cadmium	0.023 milligrams per dry standard cubic meter.	Biomass—0.00014 milligrams per dry standard cubic meter. Coal—0.058 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	36 parts per million dry volume.	Biomass—160 parts per million dry volume. Coal—46 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (Total Mass Basis).	No Total Mass Basis limit, must meet the toxic equivalency basis limit below.	Biomass—0.52 nanograms per dry standard cubic meter [c]. Coal—0.51 nanograms per dry standard cubic meter [c].	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).

TABLE 6 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR ENERGY RECOVERY UNITS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER—Continued

[*Date 6 months after publication of the Final Rule in the* **Federal Register**]

For the air pollutant	You must meet this emission limitation [a]		Using this averaging time	And determining compliance using this method
	Liquid/Gas	Solids		
Dioxins/furans (toxic equivalency basis).	0.093 nanograms per dry standard cubic meter [c].	Biomass—0.076 nanograms per dry standard cubic meter [c]. Coal—0.075 nanograms per dry standard cubic meter [c].	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 23 of appendix A–7 of this part).
Hydrogen chloride	14 parts per million dry volume.	0.50 parts per million dry volume.	3-run average (For Method 26, collect a minimum volume of 360 liters per run. For Method 26A, collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.096 milligrams per dry standard cubic meter.	Biomass—0.0019 milligrams per dry standard cubic meter. Coal—0.0031 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.00091 milligrams per dry standard cubic meter [c].	0.0020 milligrams per dry standard cubic meter.	3-run average (collect enough volume to meet an in-stack detection limit data quality objective of 0.03 μg/dscm).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008) [b].
Oxides of nitrogen	76 parts per million dry volume.	Biomass—290 parts per million dry volume. Coal—340 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter (filterable).	110 milligrams per dry standard cubic meter.	Biomass—5.1 milligrams per dry standard cubic meter. Coal—86 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8) if the unit has a design capacity less than 250 MMBtu/hr; or PM CEMS (performance specification 11 of appendix B and procedure 2 of appendix F of this part) if the unit has a design capacity equal to or greater than 250 MMBtu/hr. Use Method 5 or 5I of Appendix A of this part and collect a minimum sample volume of 1 dscm per test run for the PM CEMS correlation testing.
Sulfur dioxide	720 parts per million dry volume.	Biomass—7.3 parts per million dry volume. Coal—650 parts per million dry volume.	3-run average (for Method 6, collect a minimum of 60 liters, for Method 6C, 1 hour minimum sample time per run).	Performance test (Method 6 or 6C at 40 CFR part 60, appendix A–4.
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods.	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).

[a] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the Total Mass Basis limit or the toxic equivalency basis limit.

[b] Incorporated by reference, see § 60.17.

[c] If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to § 60.2155 if all of the other provision of § 60.2155 are met. For all other pollutants that do not contain a footnote "c", your performance tests for this pollutant for at least 2 consecutive years must show that your emissions are at or 75 percent of this limit in order to qualify for skip testing.

40. Table 7 to Subpart CCCC is added to read as follows:

TABLE 7 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR WASTE-BURNING KILNS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR RECONSTRUCTION OR MODIFICATION AFTER

[*Date 6 months after publication of the Final Rule in the* **Federal Register**]

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
Cadmium	0.00082 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	90 (long kilns)/320 (preheater/precalciner) parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis)	0.51 nanograms per dry standard cubic meter [b].	3-run average (collect a minimum volume of 4 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.075 nanograms per dry standard cubic meter [b].	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	3.0 parts per million dry volume [b]	3-run average (1 hour minimum sample time per run) or 30-day rolling average if HCl CEMS are used.	Performance test (Method 321 at 40 CFR part 63, appendix A) or HCl CEMS if a wet scrubber is not used.
Lead	0.0043 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.0037 milligrams per dry standard cubic meter.	30-day rolling average	Mercury CEMS or sorbent trap monitoring system (performance specification 12A or 12B, respectively, of appendix B of this part.)
Oxides of nitrogen	200 parts per million dry volume	30-day rolling average	NO_X Continuous Emissions Monitoring System (performance specification 2 of appendix B and procedure 1 of appendix F of this part). Use a span value of 400 ppm.
Particulate matter (filterable)	8.9 milligrams per dry standard cubic meter.	30-day rolling average	PM Continuous Emissions Monitoring System (performance specification 11 of appendix B and procedure 2 of appendix F of this part).
Sulfur dioxide	130 parts per million dry volume	30-day rolling average	Sulfur dioxide Continuous Emissions Monitoring System (performance specification 2 of appendix B and procedure 1 of appendix F of this part). Use a span value of 260 ppm.

[a] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.

[b] If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to § 60.2155 if all of the other provision of § 60.2155 are met. For all other pollutants that do not contain a footnote "b", your performance tests for this pollutant for at least 2 consecutive years must show that your emissions are at or 75 percent of this limit in order to qualify for skip testing.

41. Table 8 to Subpart CCCC is added to read as follows:

TABLE 8 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR SMALL, REMOTE INCINERATORS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER

[*Date 6 months after publication of the Final Rule in the* **Federal Register**]

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
Cadmium	0.61 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).

TABLE 8 TO SUBPART CCCC OF PART 60—EMISSION LIMITATIONS FOR SMALL, REMOTE INCINERATORS THAT COMMENCED CONSTRUCTION AFTER JUNE 4, 2010, OR THAT COMMENCED RECONSTRUCTION OR MODIFICATION AFTER—Continued

[*Date 6 months after publication of the Final Rule in the* **Federal Register**]

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
Carbon monoxide	12 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis)	1,200 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	31 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	200 parts per million by dry volume.	3-run average (For Method 26, collect a minimum volume of 60 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.26 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.0035 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008) [b], collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum volume as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008) [b].
Oxides of nitrogen	78 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter (filterable)	230 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8).
Sulfur dioxide	1.2 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4.
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.
[b] Incorporated by reference, see § 60.17.

42. Revise the heading for subpart DDDD to read as follows:

Subpart DDDD–Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units

* * * * *

43. Section 60.2500 is revised to read as follows:

§ 60.2500 What is the purpose of this subpart?

This subpart establishes emission guidelines and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units. The pollutants addressed by these emission guidelines are listed in table 2 of this subpart and tables 6 through 9 of this subpart. These emission guidelines are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of this part.

44. Section 60.2505 is revised to read as follows:

§ 60.2505 Am I affected by this subpart?

(a) If you are the Administrator of an air quality program in a state or United States protectorate with one or more existing CISWI units that meets the criteria in paragraphs (b) through (d) of this section, you must submit a state plan to EPA that implements the emission guidelines contained in this subpart.

(b) You must submit a state plan to EPA by December 3, 2001 for incinerator units that commenced construction on or before November 30, 1999 and that were not modified or reconstructed after June 1, 2001.

(c) You must submit a state plan that meets the requirements of this subpart and contains the more stringent emission limit for the respective pollutant in table 6 of this subpart or table 1 of subpart CCCC of this part to EPA by [*DATE 1 YEAR AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*] for incinerators that commenced construction after November 30, 1999, but no later than June 4, 2010, or commenced modification or reconstruction after June 1, 2001 but no later than [*DATE 6 MONTHS AFTER*

PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(d) You must submit a state plan to EPA that meets the requirements of this subpart and contains the emission limits in tables 7 through 9 of this subpart by [*DATE 1 YEAR AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*] for CISWI units other than incinerator units that commenced construction on or before June 4, 2010.

45. Section 60.2525 is revised to read as follows:

§ 60.2525 What if my state plan is not approvable?

(a) If you do not submit an approvable state plan (or a negative declaration letter) by December 2, 2002, EPA will develop a federal plan according to § 60.27 to implement the emission guidelines contained in this subpart. Owners and operators of CISWI units not covered by an approved state plan must comply with the federal plan. The federal plan is an interim action and will be automatically withdrawn when your state plan is approved.

(b) If you do not submit an approvable state plan (or a negative declaration letter) to EPA that meets the requirements of this subpart and contains the emission limits in tables 6 through 9 of this subpart for CISWI units that commenced construction on or before June 4, 2010, then EPA will develop a federal plan according to § 60.27 to implement the emission guidelines contained in this subpart. Owners and operators of CISWI units not covered by an approved state plan must comply with the federal plan. The federal plan is an interim action and will be automatically withdrawn when your state plan is approved.

46. Section 60.2535 is amended by:

a. Revising paragraph (a) introductory text.

b. Redesignating paragraph (b) as paragraph (d).

c. Adding paragraphs (b) and (c).

§ 60.2535 What compliance schedule must I include in my state plan?

(a) For CISWI units in the incinerator subcategory that commenced construction on or before November 30, 1999, your state plan must include compliance schedules that require CISWI units to achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (a)(1) and (2) of this section.

* * * * *

(b) For CISWI units in the incinerator subcategory that commenced construction after November 30, 1999, but on or before June 4, 2010, and for CISWI units in the energy recovery units and waste-burning kilns subcategories that commenced construction before June 4, 2010, your state plan must include compliance schedules that require CISWI units to achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (b)(1) and (2) of this section.

(1) [*DATE 5 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*].

(2) 3 years after the effective date of state plan approval.

(c) For CISWI units in the small remote incinerator subcategory that commenced construction after November 30, 1999, but on or before June 4, 2010, your state plan must include compliance schedules that require small remote incinerator CISWI units to achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (b)(1) and (2) of this section.

(1) March 21, 2016.

(2) 3 years after the effective date of state plan approval.

* * * * *

47. Section 60.2540 is amended by revising paragraph (a) to read as follows:

§ 60.2540 Are there any state plan requirements for this subpart that apply instead of the requirements specified in subpart B?

* * * * *

(a) State plans developed to implement this subpart must be as protective as the emission guidelines contained in this subpart. State plans must require all CISWI units to comply by the dates specified in § 60.2535. This applies instead of the option for case-by-case less stringent emission standards and longer compliance schedules in § 60.24(f).

* * * * *

48. Section 60.2541 is added to read as follows:

§ 60.2541 In lieu of a state plan submittal, are there other acceptable option(s) for a state to meet its Clean Air Act section 111(d)/129(b)(2) obligations?

Yes, a state may meet its Clean Air Act section 111(d)/129 obligations by submitting an acceptable written request for delegation of the federal plan that meets the requirements of this section. This is the only other option for a state to meet its Clean Air Act section 111(d)/129 obligations.

(a) An acceptable federal plan delegation request must include the following:

(1) A demonstration of adequate resources and legal authority to administer and enforce the federal plan.

(2) The items under § 60.2515(a)(1), (2), and (7).

(3) Certification that the hearing on the state delegation request, similar to the hearing for a state plan submittal, was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

(4) A commitment to enter into a Memorandum of Agreement with the Regional Administrator who sets forth the terms, conditions, and effective date of the delegation and that serves as the mechanism for the transfer of authority. Additional guidance and information is given in EPA's Delegation Manual, Item 7–139, Implementation and Enforcement of 111(d)(2) and 111(d)/(2)/129(b)(3) federal plans.

(b) A state with an already approved CISWI Clean Air Act section 111(d)/129 state plan is not precluded from receiving EPA approval of a delegation request for the revised federal plan, providing the requirements of paragraph (a) of this section are met, and at the time of the delegation request, the state also requests withdrawal of EPA's previous state plan approval.

(c) A state's Clean Air Act section 111(d)/129 obligations are separate from its obligations under Title V of the Clean Air Act.

49. Section 60.2542 is added to read as follows:

§ 60.2542 What authorities will not be delegated to state, local, or tribal agencies?

The authorities listed under § 60.2030(c) will not be delegated to state, local, or tribal agencies.

50. Section 60.2545 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 60.2545 Does this subpart directly affect CISWI unit owners and operators in my state?

* * * * *

(b) If you do not submit an approvable plan to implement and enforce the guidelines contained in this subpart for CISWI units that commenced construction on or before November 30, 1999 by December 2, 2002, EPA will implement and enforce a federal plan, as provided in § 60.2525, to ensure that each unit within your state reaches compliance with all the provisions of this subpart by December 1, 2005.

(c) If you do not submit an approvable plan to implement and enforce the

guidelines contained in this subpart by [*DATE 1 YEAR AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*] for CISWI units that commenced construction on or before June 4, 2010, EPA will implement and enforce a federal plan, as provided in § 60.2525, to ensure that each unit within your state that commenced construction on or before June 4, 2010, reaches compliance with all the provisions of this subpart by [*DATE 5 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*].

51. Section § 60.2550 is amended by revising paragraph (a)(1) to read as follows:

§ 60.2550 What CISWI units must I address in my state plan?

(a) * * *

(1) Incineration units in your state that commenced construction on or before June 4, 2010.

* * * * *

52. Section § 60.2555 is amended by:

a. Revising the introductory text.

b. Removing and reserving paragraph (b).

c. Revising paragraphs (c), (e)(3), (f)(3), and (g).

d. Removing and reserving paragraphs (j), (k), and (l).

e. Revising paragraphs (m) and (n).

f. Removing paragraph (o).

§ 60.2555 What combustion units are exempt from my state plan?

This subpart exempts the types of units described in paragraphs (a), (c) through (i), (m), and (n) of this section, but some units are required to provide notifications. Air curtain incinerators are exempt from the requirements in this subpart except for the provisions in §§ 60.2805, 60.2860, and 60.2870.

* * * * *

(c) *Municipal waste combustion units.* Incineration units that are subject to subpart Ea of this part (Standards of Performance for Municipal Waste Combustors); subpart Eb of this part (Standards of Performance for Large Municipal Waste Combustors); subpart Cb of this part (Emission Guidelines and Compliance Time for Large Municipal Combustors); subpart AAAA of this part (Standards of Performance for Small Municipal Waste Combustion Units); or subpart BBBB of this part (Emission Guidelines for Small Municipal Waste Combustion Units).

* * * * *

(e) * * *

(3) You submit a request to the Administrator for a determination that the qualifying cogeneration facility is combusting homogenous waste as that term is defined in § 60.2875. The request must include information sufficient to document that the unit meets the criteria of the definition of a small power production facility and that the waste material the unit is proposed to burn is homogeneous.

* * * * *

(f) * * *

(3) You submit a request to the Administrator for a determination that the qualifying cogeneration facility is combusting homogenous waste as that term is defined in § 60.2875. The request must include information sufficient to document that the unit meets the criteria of the definition of a cogeneration facility and that the waste material the unit is proposed to burn is homogeneous.

(g) *Hazardous waste combustion units.* Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

* * * * *

(m) *Sewage treatment plants.* Incineration units regulated under subpart O of this part (Standards of Performance for Sewage Treatment Plants).

(n) *Sewage sludge incineration units.* Incineration units combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that are subject to subpart LLLL of this part (Standards of Performance for Sewage Sludge Incineration Units) or subpart MMMM of this part (Emission Guidelines for Sewage Sludge Incineration Units).

§ 60.2558 [Removed]

53. Section 60.2558 is removed.

54. Section 60.2635 is amended by revising paragraph (c)(1)(vii) to read as follows:

§ 60.2635 What are the operator training and qualification requirements?

* * * * *

(c) * * *

(1) * * *

(vii) Actions to prevent and correct malfunctions or to prevent conditions that may lead to malfunctions.

* * * * *

55. Section 60.2650 is amended by revising paragraph (d) to read as follows:

§ 60.2650 How do I maintain my operator qualification?

* * * * *

(d) Prevention and correction of malfunctions or conditions that may lead to malfunction.

* * * * *

56. Section 60.2670 is revised to read as follows:

§ 60.2670 What emission limitations must I meet and by when?

(a) You must meet the emission limitations for each CISWI unit, including bypass stack or vent, specified in table 2 of this subpart or tables 6 through 9 of this subpart by the final compliance date under the approved state plan, federal plan, or delegation, as applicable. The emission limitations apply at all times the unit is operating including and not limited to startup, shutdown, or malfunction.

(b) Units that do not use wet scrubbers must maintain opacity to less than or equal to the percent opacity (three 1-hour blocks consisting of ten 6-minute average opacity values) specified in table 2 of this subpart, as applicable.

57. Section 60.2675 is amended by:

a. Revising paragraphs (a) introductory text and paragraphs (a)(2) through (4).

b. Revising paragraph (b).

c. Adding paragraphs (d), (e), (f), and (g).

The revisions and addtions read as follows:

§ 60.2675 What operating limits must I meet and by when?

(a) If you use a wet scrubber(s) to comply with the emission limitations, you must establish operating limits for up to four operating parameters (as specified in table 3 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

* * * * *

(2) Minimum pressure drop across the wet particulate matter scrubber, which is calculated as the lowest 1-hour average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the fan for the wet scrubber, which is calculated as the lowest 1-hour average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquid flow rate, which is calculated as the lowest 1-hour average liquid flow rate at the inlet to the wet acid gas or particulate matter scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as the lowest 1-hour average liquor pH at the inlet to the wet

acid gas scrubber measured during the most recent performance test demonstrating compliance with the HCl emission limitation.

(b) You must meet the operating limits established during the initial performance test on the date the initial performance test is required or completed (whichever is earlier). You must conduct an initial performance evaluation of each continuous monitoring system and continuous parameter monitoring system within 60 days of installation of the monitoring system.

* * * * *

(d) If you use an electrostatic precipitator to comply with the emission limitations, you must measure the (secondary) voltage and amperage of the electrostatic precipitator collection plates during the particulate matter performance test. Calculate the average electric power value (secondary voltage × secondary current = secondary electric power) for each test run. The operating limit for the electrostatic precipitator is calculated as the lowest 1-hour average secondary electric power measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(e) If you use activated carbon sorbent injection to comply with the emission limitations, you must measure the sorbent flow rate during the performance testing. The operating limit for the carbon sorbent injection is calculated as the lowest 1-hour average sorbent flow rate measured during the most recent performance test demonstrating compliance with the mercury emission limitations.

(f) If you use selective noncatalytic reduction to comply with the emission limitations, you must measure the charge rate, the secondary chamber temperature (if applicable to your CISWI unit), and the reagent flow rate during the nitrogen oxides performance testing. The operating limits for the selective noncatalytic reduction are calculated as the lowest 1-hour average charge rate, secondary chamber temperature, and reagent flow rate measured during the most recent performance test demonstrating compliance with the nitrogen oxides emission limitations.

(g) If you do not use a wet scrubber, electrostatic precipitator, or fabric filter to comply with the emission limitations, and if you do not determine compliance with your particulate matter emission limitation with a particulate matter continuous emissions monitoring system, you must maintain opacity to less than or equal to ten percent opacity (1-hour block average).

58. Section 60.2680 is revised to read as follows:

§ 60.2680 What if I do not use a wet scrubber, fabric filter, activated carbon injection, selective noncatalytic reduction, or an electrostatic precipitator to comply with the emission limitations?

(a) If you use an air pollution control device other than a wet scrubber, activated carbon injection, selective noncatalytic reduction, fabric filter, or an electrostatic precipitator or limit emissions in some other manner, including mass balances, to comply with the emission limitations under § 60.2670, you must petition the EPA Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the Administrator. Your petition must include the five items listed in paragraphs (a)(1) through (5) of this section.

(1) Identification of the specific parameters you propose to use as additional operating limits.

(2) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters and how limits on these parameters will serve to limit emissions of regulated pollutants.

(3) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters.

(4) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(5) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

(b) [Reserved]

59. Section 60.2685 is revised to read as follows:

§ 60.2685 Affirmative Defense for Exceedance of an Emission Limit During Malfunction.

In response to an action to enforce the standards set forth in paragraph § 60.2670 you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at § 60.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner; and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(6) All emissions and/or parameter monitoring and systems, as well as control systems, were kept in operation if at all possible, consistent with safety and good air pollution control practices;

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs;

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the

amount of excess emissions that were the result of the malfunction.

(b) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in § 60.2670 to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45-day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedances.

60. Section 60.2690 is amended by revising paragraphs (c) and (g)(1) and (2) and adding paragraphs (h) and (i) to read as follows:

§ 60.2690 How do I conduct the initial and annual performance test?

* * * * *

(c) All performance tests must be conducted using the minimum run duration specified in tables 2 and 6 through 9 of this subpart.

* * * * *

(g) * * *

(1) Measure the concentration of each dioxin/furan tetra- through octa-isomer emitted using EPA Method 23 at 40 CFR part 60, appendix A.

(2) For each dioxin/furan (tetra- through octa-chlorinated) isomer measured in accordance with paragraph (g)(1) of this section, multiply the isomer concentration by its corresponding toxic equivalency factor specified in table 4 of this subpart.

* * * * *

(h) Method 22 at 40 CFR part 60, appendix A–7 must be used to determine compliance with the fugitive ash emission limit in table 2 of this subpart or tables 6 through 9 of this subpart.

(i) If you have an applicable opacity operating limit, you must determine compliance with the opacity limit using Method 9 at 40 CFR part 60, appendix A–4, based on three 1-hour blocks consisting of ten 6-minute average opacity values, unless you are required to install a continuous opacity monitoring system, consistent with § 60.2710 and § 60.2730.

61. Section 60.2695 is revised to read as follows:

§ 60.2695 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in table 2 of this subpart or tables 6 through 9 of this subpart.

62. Section 60.2700 is revised to read as follows:

§ 60.2700 How do I demonstrate initial compliance with the amended emission limitations and establish the operating limits?

You must conduct a performance test, as required under §§ 60.2690 and 60.2670, to determine compliance with the emission limitations in table 2 of this subpart and tables 6 through 9 of this subpart, to establish compliance with any opacity operating limits in § 60.2675, and to establish operating limits using the procedures in § 60.2675 or § 60.2680. The performance test must be conducted using the test methods listed in table 2 of this subpart and tables 6 through 9 of this subpart and the procedures in § 60.2690. The use of the bypass stack during a performance test shall invalidate the performance test. You must conduct a performance evaluation of each continuous monitoring system within 60 days of installation of the monitoring system.

63. Section 60.2705 is revised to read as follows:

§ 60.2705 By what date must I conduct the initial performance test?

(a) The initial performance test must be conducted no later than 180 days after your final compliance date. Your final compliance date is specified in table 1 of this subpart.

(b) If you commence or recommence combusting a solid waste at an existing combustion unit at any commercial or industrial facility and you conducted a test consistent with the provisions of this subpart while combusting the given solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber, you do not need to retest until 6 months from the date you reintroduce that solid waste.

(c) If you commence combusting or recommence combusting a solid waste at an existing combustion unit at any commercial or industrial facility and you have not conducted a performance test consistent with the provisions of this subpart while combusting the given solid waste within the 6 months preceding the reintroduction of that solid waste in the combustion chamber, you must conduct a performance test within 60 days commencing or recommencing solid waste combustion.

64. Section 60.2706 is added to read as follows:

§ 60.2706 By what date must I conduct the initial air pollution control device inspection?

(a) The initial air pollution control device inspection must be conducted within 60 days after installation of the control device and the associated CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after the final compliance date for meeting the amended emission limitations.

(b) Within 10 operating days following an air pollution control device inspection, all necessary repairs must be completed unless the owner or operator obtains written approval from the state agency establishing a date whereby all necessary repairs of the designated facility must be completed.

65. Section 60.2710 is revised to read as follows:

§ 60.2710 How do I demonstrate continuous compliance with the amended emission limitations and the operating limits?

(a) Compliance with standards.

(1) The emission standards and operating requirements set forth in this subpart apply at all times.

(2) If you cease combusting solid waste you may opt to remain subject to the provisions of this subpart. Consistent with the definition of CISWI unit, you are subject to the requirements of this subpart at least 6 months following the last date of solid waste combustion. Solid waste combustion is ceased when solid waste is not in the combustion chamber (*i.e.,* the solid waste feed to the combustor has been cut off for a period of time not less than the solid waste residence time).

(3) If you cease combusting solid waste you must be in compliance with any newly applicable standards on the effective date of the waste-to-fuel switch. The effective date of the waste-to-fuel switch is a date selected by you, that must be at least 6 months from the date that you ceased combusting solid waste, consistent with § 60.2710(a)(2). Your source must remain in compliance with this subpart until the effective date of the waste-to-fuel switch.

(4) If you own or operate an existing commercial or industrial combustion unit that combusted a fuel or non-waste

material, and you commence or recommence combustion of solid waste, you are subject to the provisions of this subpart as of the first day you introduce or reintroduce solid waste to the combustion chamber, and this date constitutes the effective date of the fuel-to-waste switch. You must complete all initial compliance demonstrations for any section 112 standards that are applicable to your facility before you commence or recommence combustion of solid waste. You must provide 30 days prior notice of the effective date of the waste-to-fuel switch. The notification must identify:

(i) The name of the owner or operator of the CISWI unit, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

(ii) The currently applicable subcategory under this subpart, and any 40 CFR part 63 subpart and subcategory that will be applicable after you cease combusting solid waste;

(iii) The fuel(s), non-waste material(s) and solid waste(s) the CISWI unit is currently combusting and has combusted over the past 6 months, and the fuel(s) or non-waste materials the unit will commence combusting;

(iv) The date on which you became subject to the currently applicable emission limits;

(v) The date upon which you will cease combusting solid waste, and the date (if different) that you intend for any new requirements to become applicable (*i.e.,* the effective date of the waste-to-fuel switch), consistent with (2) and (3) above.

(5) All air pollution control equipment necessary for compliance with any newly applicable emissions limits which apply as a result of the cessation or commencement or recommencement of combusting solid waste must be installed and operational as of the effective date of the waste-to-fuel, or fuel-to-waste switch.

(6) All monitoring systems necessary for compliance with any newly applicable monitoring requirements which apply as a result of the cessation or commencement or recommencement of combusting solid waste must be installed and operational as of the effective date of the waste-to-fuel, or fuel-to-waste switch. All calibration and drift checks must be performed as of the effective date of the waste-to-fuel, or fuel-to-waste switch. Relative accuracy tests must be performed as of the performance test deadline for PM CEMS. Relative accuracy testing for other CEMS need not be repeated if that testing was previously performed consistent with section 112 monitoring requirements or monitoring requirements under this subpart.

(b) You must conduct an annual performance test for the pollutants listed in table 2 of this subpart or tables 6 through 9 of this subpart and opacity for each CISWI unit as required under § 60.2690. The annual performance test must be conducted using the test methods listed in table 2 of this subpart or tables 6 through 9 of this subpart and the procedures in § 60.2690. Opacity must be measured using EPA Reference Method 9 at 40 CFR part 60. Annual performance tests are not required if you use CEMS or continuous opacity monitoring systems to determine compliance.

(c) You must continuously monitor the operating parameters specified in § 60.2675 or established under § 60.2680 and as specified in § 60.2735. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Three-hour block average values are used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under § 60.2680. Operating limits are confirmed or reestablished during performance tests.

(d) You must burn only the same types of waste and fuels used to establish subcategory applicability (for ERUs) and operating limits during the performance test.

(e) For energy recovery units, incinerators, and small remote units, you must perform annual visual emissions test for ash handling.

(f) For energy recovery units, you must conduct an annual performance test for opacity using EPA Reference Method 9 at 40 CFR part 60 (except where particulate matter continuous monitoring system or continuous parameter monitoring systems are used) and the pollutants listed in table 7 of this subpart.

(g) For facilities using a CEMS to demonstrate compliance with the carbon monoxide emission limit, compliance with the carbon monoxide emission limit may be demonstrated by using the CEMS according to the following requirements:

(1) You must measure emissions according to § 60.13 to calculate 1-hour arithmetic averages, corrected to 7 percent oxygen. CEMS data during startup and shutdown, as defined in this subpart, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. You must demonstrate initial compliance with the carbon monoxide emissions limit using a 30-day rolling average of the 1-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown as defined in this subpart, calculated using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7.

(2) Operate the carbon monoxide continuous emissions monitoring system in accordance with the applicable requirements of performance specification 4A of appendix B and the quality assurance procedures of appendix F of this part.

(h) For waste-burning kilns, demonstrate continuous compliance with the particulate matter emissions limit using a particulate matter continuous emissions monitoring system according to the procedures in § 60.2730(n). Energy recovery units with design heat input capacities greater than 250 MMBtu/hr may elect to demonstrate continuous compliance with the particulate matter emissions limit using a particulate matter CEMS according to the procedures in § 60.2730(n) instead of the continuous parameter monitoring system specified in § 60.2710(i).

(i) For energy recovery units with design capacities greater than or equal to 10 MMBTU/hour but less than 250 MMBtu/hr you must install, operate, certify and maintain a continuous opacity monitoring system (COMS) according to the procedures in § 60.2730.

(j) For waste-burning kilns, you must conduct an annual performance test for the pollutants (except mercury and particulate matter, and hydrogen chloride if no acid gas wet scrubber is used) listed in table 8 of this subpart. If your waste-burning kiln is not equipped with a wet scrubber, you must determine compliance with the hydrogen chloride emission limit using a CEMS as specified in § 60.2730. You must determine compliance with the mercury emissions limit using a mercury CEMS according to the following requirements:

(1) Operate a CEMS in accordance with performance specification 12A at 40 CFR part 60, appendix B or a sorbent trap based integrated monitor in accordance with performance specification 12B at 40 CFR part 60, appendix B. The duration of the performance test must be a calendar month. For each calendar month in which the waste-burning kiln operates, hourly mercury concentration data and stack gas volumetric flow rate data must be obtained.

(2) Owners or operators using a mercury continuous emissions monitoring systems must install, operate, calibrate and maintain an

instrument for continuously measuring and recording the mercury mass emissions rate to the atmosphere according to the requirements of performance specifications 6 and 12A at 40 CFR part 60, appendix B and quality assurance procedure 5 at 40 CFR part 60, appendix F.

(3) The owner or operator of a waste-burning kiln must demonstrate initial compliance by operating a mercury continuous emissions monitor while the raw mill of the in-line kiln/raw mill is operating under normal conditions and while the raw mill of the in-line kiln/raw mill is not operating.

(k) If you use an air pollution control device to meet the emission limitations in this subpart, you must conduct an initial and annual inspection of the air pollution control device. The inspection must include, at a minimum, the following:

(1) Inspect air pollution control device(s) for proper operation.

(2) Develop a site-specific monitoring plan according to the requirements in paragraph (l) of this section. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under § 60.13(i).

(l) For each CMS required in this section, you must develop and submit to the EPA Administrator for approval a site-specific monitoring plan according to the requirements of this paragraph (l) that addresses paragraphs (l)(1)(i) through (vi) of this section.

(1) You must submit this site-specific monitoring plan at least 60 days before your initial performance evaluation of your continuous monitoring system.

(i) Installation of the continuous monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device).

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer and the data collection and reduction systems.

(iii) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(iv) Ongoing operation and maintenance procedures in accordance with the general requirements of § 60.11(d).

(v) Ongoing data quality assurance procedures in accordance with the general requirements of § 60.13.

(vi) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 60.7(b), (c), (c)(1), (c)(4), (d), (e), (f), and (g).

(2) You must conduct a performance evaluation of each continuous monitoring system in accordance with your site-specific monitoring plan.

(3) You must operate and maintain the continuous monitoring system in continuous operation according to the site-specific monitoring plan.

(m) If you have an operating limit that requires the use of a flow monitoring system, you must meet the requirements in paragraphs (l) and (m)(1) through (4) of this section.

(1) Install the flow sensor and other necessary equipment in a position that provides a representative flow.

(2) Use a flow sensor with a measurement sensitivity of no greater than 2 percent of the expected process flow rate.

(3) Minimize the effects of swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(4) Conduct a flow monitoring system performance evaluation in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(n) If you have an operating limit that requires the use of a pressure monitoring system, you must meet the requirements in paragraphs (l) and (n)(1) through (6) of this section.

(1) Install the pressure sensor(s) in a position that provides a representative measurement of the pressure (*e.g.,* PM scrubber pressure drop).

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a pressure sensor with a minimum tolerance of 1.27 centimeters of water or a minimum tolerance of 1 percent of the pressure monitoring system operating range, whichever is less.

(4) Perform checks at least once each process operating day to ensure pressure measurements are not obstructed (*e.g.,* check for pressure tap pluggage daily).

(5) Conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(6) If at any time the measured pressure exceeds the manufacturer's specified maximum operating pressure range, conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan and confirm that the pressure monitoring system continues to meet the performance requirements in your monitoring plan. Alternatively, install and verify the operation of a new pressure sensor.

(o) If you have an operating limit that requires the use of a pressure monitoring system, you must meet the requirements in paragraphs (l) and (n)(1) through (6) of this section.

(1) Install the pressure sensor(s) in a position that provides a representative measurement of the pressure (*e.g.,* PM scrubber pressure drop).

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a pressure sensor with a minimum tolerance of 1.27 centimeters of water or a minimum tolerance of 1 percent of the pressure monitoring system operating range, whichever is less.

(4) Perform checks at least once each process operating day to ensure pressure measurements are not obstructed (*e.g.,* check for pressure tap pluggage daily).

(5) Conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(6) If at any time the measured pressure exceeds the manufacturer's specified maximum operating pressure range, conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan and confirm that the pressure monitoring system continues to meet the performance requirements in your monitoring plan. Alternatively, install and verify the operation of a new pressure sensor.

(p) If you have an operating limit that requires a secondary electric power monitoring system for an electrostatic precipitator, you must meet the requirements in paragraphs (l) and (p)(1) and (2) of this section.

(1) Install sensors to measure (secondary) voltage and current to the precipitator collection plates.

(2) Conduct a performance evaluation of the electric power monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(q) If you have an operating limit that requires the use of a monitoring system to measure sorbent injection rate (*e.g.,* weigh belt, weigh hopper, or hopper flow measurement device), you must meet the requirements in paragraphs (l) and (q)(1) through (3) of this section.

(1) Install the system in a position(s) that provides a representative measurement of the total sorbent injection rate.

(2) Conduct a performance evaluation of the sorbent injection rate monitoring

system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(r) If you elect to use a fabric filter bag leak detection system to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (l) and (r)(1) through (5) of this section.

(1) Install a bag leak detection sensor(s) in a position(s) that will be representative of the relative or absolute particulate matter loadings for each exhaust stack, roof vent, or compartment (*e.g.,* for a positive pressure fabric filter) of the fabric filter.

(2) Use a bag leak detection system certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(3) Conduct a performance evaluation of the bag leak detection system in accordance with your monitoring plan and consistent with the guidance provided in EPA–454/R–98–015 (incorporated by reference, see § 60.17).

(4) Use a bag leak detection system equipped with a device to continuously record the output signal from the sensor.

(5) Use a bag leak detection system equipped with a system that will sound an alarm when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is observed readily by plant operating personnel.

(s) For facilities using a CEMS to demonstrate compliance with the sulfur dioxide emission limit, compliance with the sulfur dioxide emission limit may be demonstrated by using the CEMS specified in § 60.2730 to measure sulfur dioxide and calculating a 30-day rolling average emission concentration using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7. The sulfur dioxide CEMS must be operated according to performance specification 2 in appendix B of this part and must follow the procedures and methods specified in this paragraph (s). For sources that have actual inlet emissions less than 100 parts per million dry volume, the relative accuracy criterion for inlet sulfur dioxide CEMS should be no greater than 20 percent of the mean value of the reference method test data in terms of the units of the emission standard, or 5 parts per million dry volume absolute value of the mean difference between the reference method and the CEMS, whichever is greater.

(1) During each relative accuracy test run of the CEMS required by performance specification 2 in appendix B of this part, collect sulfur dioxide and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the continuous emissions monitors and the test methods specified in paragraphs (s)(1)(i) and (s)(1)(ii) of this section.

(i) For sulfur dioxide, EPA Reference Method 6 or 6C, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 60.17) must be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 60.17), as applicable, must be used.

(2) The span value of the continuous emissions monitoring system at the inlet to the sulfur dioxide control device must be 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the unit subject to this rule. The span value of the CEMS at the outlet of the sulfur dioxide control device must be 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the unit subject to this rule.

(3) Conduct accuracy determinations quarterly and calibration drift tests daily in accordance with procedure 1 in appendix F of this part.

(t) For facilities using a CEMS to demonstrate continuous compliance with the nitrogen oxides emission limit, compliance with the nitrogen oxides emission limit may be demonstrated by using the CEMS specified in § 60.2730 to measure nitrogen oxides and calculating a 30-day rolling average emission concentration using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7. The nitrogen oxides CEMS must be operated according to performance specification 2 in appendix B of this part and must follow the procedures and methods specified in paragraphs (t)(1) through (t)(5) of this section.

(1) During each relative accuracy test run of the CEMS required by performance specification 2 of appendix B of this part, collect nitrogen oxides and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the CEMS and the test methods specified in paragraphs (t)(1)(i) and (ii) of this section.

(i) For nitrogen oxides, EPA Reference Method 7 or 7E at 40 CFR part 60, appendix A–4 must be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 60.17), as applicable, must be used.

(2) The span value of the CEMS must be 125 percent of the maximum estimated hourly potential nitrogen oxide emissions of unit.

(3) Conduct accuracy determinations quarterly and calibration drift tests daily in accordance with procedure 1 in appendix F of this part.

(4) The owner or operator of an affected facility may request that compliance with the nitrogen oxides emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. If carbon dioxide is selected for use in diluent corrections, the relationship between oxygen and carbon dioxide levels must be established during the initial performance test according to the procedures and methods specified in paragraphs (t)(4)(i) through (t)(4)(iv) of this section. This relationship may be reestablished during performance compliance tests.

(i) The fuel factor equation in Method 3B must be used to determine the relationship between oxygen and carbon dioxide at a sampling location. Method 3A, 3B, or as an alternative ANSI/ASME PTC 19.10–1981 (incorporated by reference, see § 60.17), as applicable, must be used to determine the oxygen concentration at the same location as the carbon dioxide monitor.

(ii) Samples must be taken for at least 30 minutes in each hour.

(iii) Each sample must represent a 1-hour average.

(iv) A minimum of 3 runs must be performed.

(u) For facilities using a continuous emissions monitoring system to demonstrate continuous compliance with any of the emission limits of this subpart, you must complete the following:

(1) Demonstrate compliance with the appropriate emission limit(s) using a 30-day rolling average, calculated using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7.

(2) Operate all continuous emissions monitoring system in accordance with the applicable procedures under appendices B and F of this part.

(v) Use of the bypass stack at any time is an emissions standards deviation for particulate matter, HCl, Pb, Cd, Hg, NO^X, SO_2, and dioxin/furans.

(w) For energy recovery units with a design heat input capacity of 100 MMBtu per hour or greater that do not use an carbon monoxide CEMS, you must install, operate, and maintain a oxygen analyzer system as defined in § 60.2875 according to the procedures in

paragraphs (w)(1) through (4) of this section.

(1) The oxygen analyzer system must be installed by the initial performance test date specified in § 60.2675.

(2) You must operate the oxygen trim system with the oxygen level set at the minimum percent oxygen by volume that is established as the operating limit for oxygen according to paragraph (w)(3) of this section.

(3) You must maintain the oxygen level such that it is not below the lowest hourly average oxygen concentration measured during the most recent CO performance test.

(4) You must calculate and record a 30-day rolling average oxygen concentration using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 of Appendix A–7 of this part.

(x) For energy recovery units with design heat input capacities greater than or equal to 250 MMBtu/hour, you must install, certify, maintain, and operate a PM CPMS monitoring emissions discharged to the atmosphere and record the output of the system as specified in paragraphs (x)(1) through (5) of this section. For other energy recovery units, you may elect to use PM CPMS operated in accordance with this section in lieu of using other CMS for monitoring PM compliance (*e.g.,* bag leak detectors, ESP secondary power, PM scrubber pressure)

(1) Install, certify, operate, and maintain your PM CPMS according to the procedures in your approved site-specific monitoring plan developed in accordance with § 60.2710(l) and (x)(1)(i) through (iii) of this section.

(i) The operating principle of the PM CPMS must be based on in-stack or extractive light scatter, light scintillation, or beta attenuation of the exhaust gas or representative exhaust gas sample. The reportable measurement output from the PM CPMS may be expressed as milliamps, stack concentration, or other raw data signal.

(ii) The PM CPMS must have a cycle time (*i.e.,* period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes.

(iii) The PM CPMS must be capable of detecting and responding to particulate matter concentrations of no greater than 0.5 mg/actual cubic meter.

(2) Collect PM CPMS hourly average output data for all energy recovery unit operating hours. Express the PM CPMS output as millamps, PM concentration, or other raw data signal value.

(3) Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit operating hours data (*e.g.,* milliamps, PM concentration, raw data signal).

66. Section 60.2715 is revised to read as follows:

§ 60.2715 By what date must I conduct the annual performance test?

You must conduct annual performance tests between 11 and 13 months of the previous performance test.

67. Section 60.2716 is added to read as follows:

§ 60.2716 By what date must I conduct the annual air pollution control device inspection?

On an annual basis (no more than 12 months following the previous annual air pollution control device inspection), you must complete the air pollution control device inspection as described in § 60.2706.

68. Section 60.2720 is revised to read as follows:

§ 60.2720 May I conduct performance testing less often?

(a) You must conduct annual performance tests according to the schedule specified in § 60.2715, with the following exceptions:

(1) You may conduct a repeat performance test at any time to establish new values for the operating limits to apply from that point forward, as specified in § 60.2725. The Administrator may request a repeat performance test at any time.

(2) You must repeat the performance test within 60 days of a process change, as defined in § 60.2875.

(3) If the initial or any subsequent performance test for any pollutant in table 2 or tables 6 through 9 of this subpart, as applicable, demonstrates that the emission level for the pollutant is no greater than the emission level specified in paragraph (a)(3)(i) or (ii) of this section, as applicable, and you are not required to conduct a performance test for the pollutant in response to a request by the Administrator in paragraph (a)(1) of this section or a process change in paragraph (a)(2) of this section, you may elect to skip conducting a performance test for the pollutant for the next 2 years. You must conduct a performance test for the pollutant during the third year and no more than 37 months following the previous performance test for the pollutant. For cadmium and lead, both cadmium and lead must be emitted at emission levels no greater than their respective emission levels specified in paragraph (a)(3)(i) of this section for you to qualify for less frequent testing under this paragraph.

(i) For particulate matter, hydrogen chloride, mercury, carbon monoxide, nitrogen oxides, sulfur dioxide, cadmium, lead, and dioxins/furans, the emission level equal to 75 percent of the applicable emission limit in table 2 or tables 6 through 9 of this subpart, as applicable, to this subpart.

(ii) For fugitive emissions, visible emissions (of combustion ash from the ash conveying system) for 2 percent of the time during each of the three 1-hour observations periods.

(4) If you are conducting less frequent testing for a pollutant as provided in paragraph (a)(3) of this section and a subsequent performance test for the pollutant indicates that your CISWI unit does not meet the emission level specified in paragraph (a)(3)(i) or (ii) of this section, as applicable, you must conduct annual performance tests for the pollutant according to the schedule specified in paragraph (a) of this section until you qualify for less frequent testing for the pollutant as specified in paragraph (a)(3) of this section.

(b) [Reserved]

69. Section 60.2730 is amended by revising paragraphs (b)(6) and (c) and adding paragraphs (d) through (r) to read as follows:

§ 60.2730 What monitoring equipment must I install and what parameters must I monitor?

* * * * *

(b) * * *

(6) The bag leak detection system must be equipped with an alarm system that will alert automatically an operator when an increase in relative particulate matter emission over a preset level is detected. The alarm must be located where it is observed easily by plant operating personnel.

* * * * *

(c) If you are using something other than a wet scrubber, activated carbon, selective non-catalytic reduction, or an electrostatic precipitator to comply with the emission limitations under § 60.2670, you must install, calibrate (to the manufacturers' specifications), maintain and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 60.2680.

(d) If you use activated carbon injection to comply with the emission limitations in this subpart, you must measure the minimum sorbent flow rate once per hour.

(e) If you use selective noncatalytic reduction to comply with the emission limitations, you must complete the following:

(1) Following the date on which the initial performance test is completed or is required to be completed under § 60.2690, whichever date comes first, ensure that the affected facility does not operate above the maximum charge rate, or below the minimum secondary chamber temperature (if applicable to your CISWI unit) or the minimum reagent flow rate measured as 3-hour block averages at all times.

(2) Operation of the affected facility above the maximum charge rate, below the minimum secondary chamber temperature and below the minimum reagent flow rate simultaneously constitute a violation of the nitrogen oxides emissions limit.

(f) If you use an electrostatic precipitator to comply with the emission limits of this subpart, you must monitor the secondary power to the electrostatic precipitator collection plates and maintain the 3-hour block averages at or above the operating limits established during the mercury or particulate matter performance test.

(g) For waste-burning kilns not equipped with a wet scrubber, in place of hydrogen chloride testing with EPA Method 321 at 40 CFR part 63, appendix A, an owner or operator must install, calibrate, maintain, and operate a CEMS for monitoring hydrogen chloride emissions discharged to the atmosphere and record the output of the system. To demonstrate continuous compliance with the hydrogen chloride emissions limit for units other than waste-burning kilns not equipped with a wet scrubber, a facility may substitute use of a hydrogen chloride continuous emissions monitoring system for conducting the hydrogen chloride annual performance test, monitoring the minimum hydrogen chloride sorbent flow rate and monitoring the minimum scrubber liquor pH.

(h) To demonstrate continuous compliance with the particulate matter emissions limit, a facility may substitute use of a particulate matter continuous emissions monitoring system for conducting the particulate matter annual performance test and monitoring the minimum pressure drop across the wet scrubber, if applicable.

(i) To demonstrate continuous compliance with the dioxin/furan emissions limit, a facility may substitute use of a continuous automated sampling system for the dioxin/furan annual performance test. You must record the output of the system and analyze the sample according to EPA Method 23 at 40 CFR part 60, appendix A–7. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to dioxin/furan from continuous monitors is published in the **Federal Register**. The owner or operator who elects to continuously sample dioxin/furan emissions instead of sampling and testing using EPA Method 23 at 40 CFR part 60, appendix A–7 must install, calibrate, maintain and operate a continuous automated sampling system and must comply with the requirements specified in § 60.58b(p) and (q).

(j) To demonstrate continuous compliance with the mercury emissions limit, a facility may substitute use of a continuous automated sampling system for the mercury annual performance test. You must record the output of the system and analyze the sample at set intervals using any suitable determinative technique that can meet performance specification 12B criteria. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to mercury from monitors is published in the **Federal Register**. The owner or operator who elects to continuously sample mercury emissions instead of sampling and testing using EPA Method 29 or 30B at 40 CFR part 60, appendix A–8, ASTM D6784–02 (Reapproved 2008) (incorporated by reference, see § 60.17), or an approved alternative method for measuring mercury emissions, must install, calibrate, maintain and operate a continuous automated sampling system and must comply with the requirements specified in § 60.58b(p) and (q).

(k) To demonstrate continuous compliance with the nitrogen oxides emissions limit, a facility may substitute use of a continuous emissions monitoring system for the nitrogen oxides annual performance test to demonstrate compliance with the nitrogen oxides emissions limits.

(1) Install, calibrate, maintain and operate a CEMS for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 2 of appendix B of this part, the quality assurance procedure 1 of appendix F of this part and the procedures under § 60.13 must be followed for installation, evaluation and operation of the CEMS.

(2) Following the date that the initial performance test for nitrogen oxides is completed or is required to be completed under § 60.2690, compliance with the emission limit for nitrogen oxides required under § 60.52b(d) must be determined based on the 30-day rolling average of the hourly emission concentrations using CEMS outlet data. The 1-hour arithmetic averages must be expressed in parts per million by volume (dry basis) and used to calculate the 30-day rolling average concentrations. The 1-hour arithmetic averages must be calculated using the data points required under § 60.13(e)(2).

(l) To demonstrate continuous compliance with the sulfur dioxide emissions limit, a facility may substitute use of a continuous automated sampling system for the sulfur dioxide annual performance test to demonstrate compliance with the sulfur dioxide emissions limits.

(1) Install, calibrate, maintain and operate a CEMS for measuring sulfur dioxide emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 2 of appendix B of this part, the quality assurance requirements of procedure 1 of appendix F of this part and the procedures under § 60.13 must be followed for installation, evaluation and operation of the CEMS.

(2) Following the date that the initial performance test for sulfur dioxide is completed or is required to be completed under § 60.2690, compliance with the sulfur dioxide emission limit may be determined based on the 30-day rolling average of the hourly arithmetic average emission concentrations using CEMS outlet data. The 1-hour arithmetic averages must be expressed in parts per million corrected to 7 percent oxygen (dry basis) and used to calculate the 30-day rolling average emission concentrations. The 1-hour arithmetic averages must be calculated using the data points required under § 60.13(e)(2).

(m) For energy recovery units that do not use a wet scrubber, fabric filter with bag leak detection system, or particulate matter CEMS, you must install, operate, certify and maintain a continuous opacity monitoring system according to the procedures in paragraphs (m)(1) through (5) of this section by the compliance date specified in § 60.2670. Energy recovery units that use a particulate matter continuous emissions monitoring system to demonstrate initial and continuing compliance according to the procedures in § 60.2730(n) are not required to install a continuous opacity monitoring system and must perform the annual performance tests for opacity consistent with § 60.2710(f).

(1) Install, operate and maintain each continuous opacity monitoring system according to performance specification 1 at 40 CFR part 60, appendix B.

(2) Conduct a performance evaluation of each continuous opacity monitoring system according to the requirements in § 60.13 and according to performance

specification 1 at 40 CFR part 60, appendix B.

(3) As specified in § 60.13(e)(1), each continuous opacity monitoring system must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(4) Reduce the continuous opacity monitoring system data as specified in § 60.13(h)(1).

(5) Determine and record all the 6-minute averages (and 1-hour block averages as applicable) collected.

(n) For energy recovery units with design capacities greater than 250 MMBtu/hr and waste-burning kilns, in place of particulate matter testing with EPA Method 5 at 40 CFR part 60, appendix A–3, an owner or operator must install, calibrate, maintain and operate a CEMS for monitoring particulate matter emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who continuously monitors particulate matter emissions instead of conducting performance testing using EPA Method 5 at 40 CFR part 60, appendix A–3 must install, calibrate, maintain and operate a CEMS and must comply with the requirements specified in paragraphs (n)(1) through (14) of this section.

(1) Notify the Administrator 1 month before starting use of the system.

(2) Notify the Administrator 1 month before stopping use of the system.

(3) The monitor must be installed, evaluated and operated in accordance with the requirements of performance specification 11 of appendix B of this part and quality assurance requirements of procedure 2 of appendix F of this part and § 60.13.

(4) The initial performance evaluation must be completed no later than 180 days after the final compliance date for meeting the amended emission limitations, as specified under § 60.2690 or within 180 days of notification to the Administrator of use of the continuous monitoring system if the owner or operator was previously determining compliance by Method 5 at 40 CFR part 60, appendix A–3 performance tests, whichever is later.

(5) The owner or operator of an affected facility may request that compliance with the particulate matter emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility must be established according to the procedures and methods specified in § 60.2710(s)(5)(i) through (iv).

(6) The owner or operator of an affected facility must conduct an initial performance test for particulate matter emissions as required under § 60.2690. Compliance with the particulate matter emission limit must be determined by using the CEMS specified in paragraph (n) of this section to measure particulate matter and calculating a 30-day rolling average emission concentration using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, appendix A–7 of this part.

(7) Compliance with the particulate matter emission limit must be determined based on the 30-day rolling average calculated using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 at 40 CFR part 60, Appendix A–7 of the part from the 1-hour arithmetic average of the CEMS outlet data.

(8) At a minimum, valid continuous monitoring system hourly averages must be obtained as specified § 60.2735.

(9) The 1-hour arithmetic averages required under paragraph (n)(7) of this section must be expressed in milligrams per dry standard cubic meter corrected to 7 percent oxygen (or carbon dioxide)(dry basis) and must be used to calculate the 30-day rolling average emission concentrations. The 1-hour arithmetic averages must be calculated using the data points required under § 60.13(e)(2).

(10) All valid CEMS data must be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (n)(8) of this section are not met.

(11) The CEMS must be operated according to performance specification 11 in appendix B of this part.

(12) During each relative accuracy test run of the CEMS required by performance specification 11 in appendix B of this part, particulate matter and oxygen (or carbon dioxide) data must be collected concurrently (or within a 30-to 60-minute period) by both the continuous emissions monitors and the following test methods.

(i) For particulate matter, EPA Reference Method 5 at 40 CFR part 60, appendix A–3 must be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B at 40 CFR part 60, appendix A–2, as applicable, must be used.

(13) Quarterly accuracy determinations and daily calibration drift tests must be performed in accordance with procedure 2 in appendix F of this part.

(14) When particulate matter emissions data are missing because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, you must collect emissions data by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 at 40 CFR part 60, appendix A–7 to provide, as necessary, valid emissions data for a minimum of 85 percent of the hours per day, 90 percent of the hours per calendar quarter, and 95 percent of the hours per calendar year that the affected facility is operated and combusting waste.

(o) To demonstrate continuous compliance with the carbon monoxide emissions limit, a facility may substitute use of a continuous automated sampling system for the carbon monoxide annual performance test to demonstrate compliance with the carbon monoxide emissions limits.

(1) Install, calibrate, maintain, and operate a CEMS for measuring carbon monoxide emissions discharged to the atmosphere and record the output of the system. The requirements under performance specification 4B of appendix B of this part, the quality assurance procedure 1 of appendix F of this part and the procedures under § 60.13 must be followed for installation, evaluation, and operation of the CEMS.

(2) Following the date that the initial performance test for carbon monoxide is completed or is required to be completed under § 60.2690, compliance with the carbon monoxide emission limit may be determined based on the 30-day rolling average of the hourly arithmetic average emission concentrations, including CEMS data during startup and shutdown as defined in this subpart, using CEMS outlet data. Except for CEMS data during startup and shutdown, as defined in this subpart, the 1-hour arithmetic averages must be expressed in parts per million corrected to 7 percent oxygen (dry basis) and used to calculate the 30-day rolling average emission concentrations. CEMS data during startup and shutdown, as defined in this subpart, are not corrected to 7 percent oxygen, and are measured at stack oxygen content. The 1-hour arithmetic averages must be calculated using the data points required under § 60.13(e)(2).

(p) The owner/operator of an affected source with a bypass stack shall install, calibrate (to manufacturers' specifications), maintain and operate a device or method for measuring the use of the bypass stack including date, time and duration.

(q) For energy recovery units with a design heat input capacity of 100 MMBtu per hour or greater that do not use a carbon monoxide CEMS, you must install, operate, and maintain a oxygen analyzer system as defined in § 60.2875

according to the procedures in paragraphs (q)(1) through (4) of this section.

(1) The oxygen analyzer system must be installed by the initial performance test date specified in § 60.2675.

(2) You must operate the oxygen trim system with the oxygen level set at the minimum percent oxygen by volume that is established as the operating limit for oxygen according to paragraph (q)(3) of this section.

(3) You must maintain the oxygen level such that it is not below the lowest hourly average oxygen concentration measured during the most recent CO performance test.

(4) You must calculate and record a 30-day rolling average oxygen concentration using Equation 19–19 in section 12.4.1 of EPA Reference Method 19 of Appendix A–7 of this part.

(r) For energy recovery units with design heat input capacities greater than or equal to 250 MMBtu/hour, you must install, certify, maintain, and operate a PM CPMS monitoring emissions discharged to the atmosphere and record the output of the system as specified in paragraphs (r)(1) through (5) of this section. For other energy recovery units, you may elect to use PM CPMS operated in accordance with this section in lieu of using other CMS for monitoring PM compliance (*e.g.,* bag leak detectors, ESP secondary power, PM scrubber pressure).

(1) Install, certify, operate, and maintain your PM CPMS according to the procedures in your approved site-specific monitoring plan developed in accordance with § 60.2710(l) and (r)(1)(i) through (iii) of this section.

(i) The operating principle of the PM CPMS must be based on in-stack or extractive light scatter, light scintillation, or beta attenuation of the exhaust gas or representative exhaust gas sample. The reportable measurement output from the PM CPMS may be expressed as milliamps, stack concentration, or other raw data signal.

(ii) The PM CPMS must have a cycle time (*i.e.,* period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes.

(iii) The PM CPMS must be capable of detecting and responding to particulate matter concentrations of no greater than 0.5 mg/actual cubic meter.

(2) Collect PM CPMS hourly average output data for all energy recovery unit operating hours. Express the PM CPMS output as millamps, PM concentration, or other raw data signal value.

(3) Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit operating hours data (*e.g.,* milliamps, PM concentration, raw data signal).

70. Section 60.2735 is revised to read as follows:

§ 60.2735 Is there a minimum amount of monitoring data I must obtain?

For each continuous monitoring system required or optionally allowed under § 60.2730, you must monitor and collect data according to this section:

(a) You must operate the monitoring system and collect data at all required intervals at all times compliance is required except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods (as specified in § 60.2770(o) of this part), and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to effect monitoring system repairs in response to monitoring system malfunctions or out-of-control periods and to return the monitoring system to operation as expeditiously as practicable.

(b) You may not use data recorded during the monitoring system malfunctions, repairs associated with monitoring system malfunctions or out-of control periods, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(c) Except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments, failure to collect required data is a deviation of the monitoring requirements.

71. Section 60.2740 is amended by:

a. Revising the introductory text.

b. Revising paragraphs (b)(5) and (e).

c. Removing and reserving paragraphs (c) and (d).

d. Adding paragraphs (n) through (u).

The revisions and additions read as follows:

§ 60.2740 What records must I keep?

You must maintain the items (as applicable) as specified in paragraphs (a), (b), and (e) through (u) of this section for a period of at least 5 years:

* * * * *

(b) * * *

(5) For affected CISWI units that establish operating limits for controls other than wet scrubbers under § 60.2675(d) through (f) or § 60.2680, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

* * * * *

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in table 3 of this subpart or a deviation from other operating limits established under § 60.2675(d) through (f) or § 60.2680 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

* * * * *

(n) Maintain records of the annual air pollution control device inspections that are required for each CISWI unit subject to the emissions limits in table 2 of this subpart or tables 6 through 9 of this subpart, any required maintenance and any repairs not completed within 10 days of an inspection or the timeframe established by the state regulatory agency.

(o) For continuously monitored pollutants or parameters, you must document and keep a record of the following parameters measured using continuous monitoring systems.

(1) All 6-minute average levels of opacity.

(2) All 1-hour average concentrations of sulfur dioxide emissions.

(3) All 1-hour average concentrations of nitrogen oxides emissions.

(4) All 1-hour average concentrations of carbon monoxide emissions. You must indicate which data are CEMS data during startup and shutdown.

(5) All 1-hour average concentrations of particulate matter emissions.

(6) All 1-hour average concentrations of mercury emissions.

(7) All 1-hour average concentrations of hydrogen chloride emissions.

(8) All 1-hour average percent oxygen concentrations.

(9) All 1-hour average PM CPMS readings or particulate matter continuous emissions monitor outputs.

(p) Records indicating use of the bypass stack, including dates, times and durations.

(q) If you choose to stack test less frequently than annually, consistent with § 60.2720(a) through (c), you must keep annual records that document that your emissions in the previous stack test(s) were less than 75 percent of the applicable emission limit and document that there was no change in source operations including fuel composition and operation of air pollution control equipment that would cause emissions of the relevant pollutant to increase within the past year.

(r) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(s) Records of all required maintenance performed on the air pollution control and monitoring equipment.

(t) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 60.11(d), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(u) For operating units that combust non-hazardous secondary materials that have been determined not to be solid waste pursuant to § 241.3(b)(1), you must keep a record which documents how the secondary material meets each of the legitimacy criteria. If you combust a fuel that has been processed from a discarded non-hazardous secondary material pursuant to § 241.3(b)(4), you must keep records as to how the operations that produced the fuel satisfies the definition of processing in § 241.2. If the fuel received a non-waste determination pursuant to the petition process submitted under § 241.3(c), you must keep a record that documents how the fuel satisfies the requirements of the petition process.

72. Section 60.2770 is amended by revising paragraph (e) and adding paragraphs (k) through (p) to read as follows:

§ 60.2770 What information must I include in my annual report?

* * * * *

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period.

* * * * *

(k) If you had a malfunction during the reporting period, the compliance report must include the number, duration, and a brief description for each type of malfunction that occurred during the reporting period and that caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 60.11(d), including actions taken to correct a malfunction.

(l) For each deviation from an emission or operating limitation that occurs for a CISWI unit for which you are not using a CMS to comply with the emission or operating limitations in this subpart, the annual report must contain the following information.

(1) The total operating time of the CISWI unit at which the deviation occurred during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(m) If there were periods during which the continuous monitoring system, including the CEMS, was out of control as specified in paragraph (o) of this section, the annual report must contain the following information for each deviation from an emission or operating limitation occurring for a CISWI unit for which you are using a continuous monitoring system to comply with the emission and operating limitations in this subpart.

(1) The date and time that each malfunction started and stopped.

(2) The date, time, and duration that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each continuous monitoring system was out-of-control, including start and end dates and hours and descriptions of corrective actions taken.

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of continuous monitoring system downtime during the reporting period, and the total duration of continuous monitoring system downtime as a percent of the total operating time of the CISWI unit at which the continuous monitoring system downtime occurred during that reporting period.

(8) An identification of each parameter and pollutant that was monitored at the CISWI unit.

(9) A brief description of the CISWI unit.

(10) A brief description of the continuous monitoring system.

(11) The date of the latest continuous monitoring system certification or audit.

(12) A description of any changes in continuous monitoring system, processes, or controls since the last reporting period.

(n) If there were periods during which the continuous monitoring system, including the CEMS, was not out of control as specified in paragraph (o) of this section, a statement that there were not periods during which the continuous monitoring system was out of control during the reporting period.

(o) A continuous monitoring system is out of control if any of the following occur.

(1) The zero (low-level), mid-level (if applicable), or high-level calibration drift exceeds two times the applicable calibration drift specification in the applicable performance specification or in the relevant standard.

(2) The continuous monitoring system fails a performance test audit (*e.g.,* cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit.

(3) The continuous opacity monitoring system calibration drift exceeds two times the limit in the applicable performance specification in the relevant standard.

(p) For energy recovery units, include the annual heat input and average annual heat input rate of all fuels being burned in the unit to verify which subcategory of energy recovery unit applies.

73. Section 60.2780 is amended by revising paragraph (c) and removing paragraphs (e) and (f).

§ 60.2780 What must I include in the deviation report?

* * * * *

(c) Durations and causes of the following:

(1) Each deviation from emission limitations or operating limits and your corrective actions.

(2) Bypass events and your corrective actions.

* * * * *

74. Section 60.2790 is revised to read as follows:

§ 60.2790 Are there any other notifications or reports that I must submit?

(a) Yes. You must submit notifications as provided by § 60.7.

(b) If you cease combusting solid waste but continue to operate, you must provide 30 days prior notice of the effective date of the waste-to-fuel switch, consistent with § 60.2710(a). The notification must identify:

(1) The name of the owner or operator of the CISWI unit, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

(2) The currently applicable subcategory under this subpart, and any 40 CFR part 63 subpart and subcategory that will be applicable after you cease combusting solid waste;

(3) The fuel(s), non-waste material(s) and solid waste(s) the CISWI unit is currently combusting and has combusted over the past 6 months, and the fuel(s) or non-waste materials the unit will commence combusting;

(4) The date on which you became subject to the currently applicable emission limits;

(5) The date upon which you will cease combusting solid waste, and the date (if different) that you intend for any new requirements to become applicable (*i.e.,* the effective date of the waste-to-fuel switch), consistent with paragraphs (b)(2) and (3) of this section).

75. Section 60.2795 is revised to read as follows:

§ 60.2795 In what form can I submit my reports?

(a) Submit initial, annual and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

(b) After December 31, 2011, within 60 days after the date of completing each performance evaluation or performance test, as they are defined in § 63.2, conducted to demonstrate compliance with this subpart, the owner or operator of the affected facility must submit the relative accuracy test audit data and performance test data, except opacity data, to EPA by successfully submitting the data electronically to EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/ert_tool.html*).

76. Section 60.2805 is revised to read as follows:

§ 60.2805 Am I required to apply for and obtain a Title V operating permit for my unit?

Yes. Each CISWI unit and air curtain incinerator subject to standards under this subpart must operate pursuant to a permit issued under Clean Air Act sections 129(e) and Title V.

77. Section 60.2860 is revised to read as follows:

§ 60.2860 What are the emission limitations for air curtain incinerators?

After the date the initial stack test is required or completed (whichever is earlier), you must meet the limitations in paragraphs (a) and (b) of this section.

(a) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values), except as described in paragraph (b) of this section.

(b) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) during the startup period that is within the first 30 minutes of operation.

78. Section 60.2870 is amended by revising paragraph (c)(2) to read as follows:

§ 60.2870 What are the recordkeeping and reporting requirements for air curtain incinerators?

* * * * *

(c) * * *

(2) The results (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) of the initial opacity tests.

* * * * *

79. Section 60.2875 is amended by:

a. Adding definitions for ''Affirmative defense,'' ''Annual heat input,'' ''Average annual heat input rate,'' ''Burn-off oven,'' ''Bypass stack,'' ''CEMS data during startup and shutdown'', ''Chemical recovery unit,'' ''Continuous monitoring system,'' ''Energy recovery unit,'' ''Energy recovery unit designed to burn biomass (Biomass),'' ''Energy recovery unit designed to burn coal (Coal),'' ''Energy recovery unit designed to burn liquid wastes material and gas (Liquid/gas),'' ''Energy recovery unit designed to burn solid materials (Solid),'' ''Foundry sand thermal reclamation unit,'' ''Homogeneous wastes,'' ''Incinerator,'' ''Kiln,'' ''Laboratory analysis unit,'' ''Minimum voltage or amperage,'' ''Opacity,'' ''Operating day,'' ''Oxygen analyzer system,'' ''Oxygen trim system,'' ''Performance evaluation,'' ''Performance test,'' ''Process change,'' ''Raw mill,'' ''Small remote incinerator,'' ''Soil treatment unit,'' ''Solid waste incineration unit,'' ''Space heater'' and ''Waste-burning kiln,'' in alphabetical order.

b. Revising the definition for ''Commercial and industrial solid waste incineration (CISWI) unit,'' ''Cyclonic burn barrel'', ''Modification,'' and ''Wet scrubber.''

c. Removing paragraph (3) of the definition for ''Deviation.''

d. Removing the definition for ''Agricultural waste,'' ''Commercial or industrial waste,'' and ''Solid waste.''

The additions and revisions read as follows:

§ 60.2875 What definitions must I know?

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

Annual heat input means the heat input for the 12 months preceding the compliance demonstration.

Average annual heat input rate means annual heat input divided by the hours of operation for the 12 months preceding the compliance demonstration.

* * * * *

Burn-off oven means any rack reclamation unit, part reclamation unit, or drum reclamation unit. A burn-off oven is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Bypass stack means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

* * * * *

CEMS data during startup and shutdown means carbon monoxide CEMS data collected during the first 4 hours of operation of energy recovery unit startup from a cold start and the hour of operation following the cessation of waste material being fed to the energy recovery unit during a unit shutdown.

Chemical recovery unit means combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. A chemical recovery unit is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart. The following seven types of units are considered chemical recovery units:

(1) Units burning only pulping liquors (*i.e.,* black liquor) that are reclaimed in

a pulping liquor recovery process and reused in the pulping process.

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(3) Units burning only wood or coal feedstock for the production of charcoal.

(4) Units burning only manufacturing byproduct streams/residue containing catalyst metals that are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(7) Units burning only photographic film to recover silver.

* * * * *

Commercial and industrial solid waste incineration (CISWI) unit means any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding 6 months, any solid waste as that term is defined in 40 CFR part 241. If the operating unit burns materials other than traditional fuels as defined in § 241.2 that have been discarded, and you do not keep and produce records as required by § 60.2740(u), the material is a solid waste and the operating unit is a CISWI unit. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the solid waste hopper (if applicable) and extends through two areas: the combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system.

* * * * *

Continuous monitoring system (CMS) means the total equipment, required under the emission monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters. A particulate matter continuous parameter monitoring system (PM CPMS) is a type of CMS.

* * * * *

Cyclonic burn barrel means a combustion device for waste materials that is attached to a 55 gallon, openhead drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air. A cyclonic burn barrel is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements.

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

Energy recovery unit means a combustion unit combusting solid waste (as that term is defined by the Administrator in 40 CFR part 241) for energy recovery. Energy recovery units include units that would be considered boilers and process heaters if they did not combust solid waste.

Energy recovery unit designed to burn biomass (Biomass) means an energy recovery unit that burns solid waste, biomass, and non-coal solid materials but less than 10 percent coal, on a heat input basis on an annual average, either alone or in combination with liquid waste, liquid fuel or gaseous fuels.

Energy recovery unit designed to burn coal (Coal) means an energy recovery unit that burns solid waste and at least 10 percent coal on a heat input basis on an annual average, either alone or in combination with liquid waste, liquid fuel or gaseous fuels.

Energy recovery unit designed to burn liquid waste material and gas (Liquid/gas) means an energy recovery unit that burns a liquid waste with liquid or gaseous fuels not combined with any solid fuel or waste materials.

Energy recovery unit designed to burn solid materials (Solid) includes energy recovery units designed to burn coal and energy recovery units designed to burn biomass.

* * * * *

Foundry sand thermal reclamation unit means a type of part reclamation unit that removes coatings that are on foundry sand. A foundry sand thermal reclamation unit is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

* * * * *

Homogeneous wastes are stable, consistent in formulation, have known fuel properties, have a defined origin, have predictable chemical and physical attributes, and result in consistent combustion characteristics and have a consistent emissions profile.

Incinerator means any furnace used in the process of combusting solid waste (as the term is defined by the Administrator in 40 CFR part 241) for the purpose of reducing the volume of the waste by removing combustible matter. Incinerator designs include single chamber and two-chamber.

Kiln means an oven or furnace, including any associated preheater or precalciner devices, used for processing a substance by burning, firing or drying. Kilns include cement kilns that produce clinker by heating limestone and other materials for subsequent production of Portland Cement.

Laboratory analysis unit means units that burn samples of materials for the purpose of chemical or physical analysis. A laboratory analysis unit is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

* * * * *

Minimum voltage or amperage means 90 percent of the lowest test-run average voltage or amperage to the electrostatic precipitator measured during the most recent particulate matter or mercury performance test demonstrating compliance with the applicable emission limits.

Modification or *modified CISWI unit* means a CISWI unit that has been changed later than June 1, 2001, and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(2) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which Clean Air Act section 129 or section 111 has established standards.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Operating day means a 24-hour period between 12:00 midnight and the following midnight during which any amount of solid waste is combusted at any time in the CISWI unit.

Oxygen analyzer system means all equipment required to determine the oxygen content of a gas stream and used to monitor oxygen in the boiler flue gas or firebox. This definition includes oxygen trim systems. The source owner or operator is responsible to install, calibrate, maintain, and operate the oxygen analyzer system in accordance with the manufacturer's recommendations.

Oxygen trim system means a system of monitors that is used to maintain excess air at the desired level in a combustion device. A typical system consists of a flue gas oxygen and/or carbon monoxide monitor that automatically provides a feedback signal to the combustion air controller.

* * * * *

Performance evaluation means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the continuous monitoring system data.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Process change means a significant permit revision, but only with respect to those pollutant-specific emission units for which the proposed permit revision is applicable, including but not limited to a change in the air pollution control devices used to comply with the emission limits for the affected CISWI unit (*e.g.,* change in the sorbent used for activated carbon injection).

* * * * *

Raw mill means a ball and tube mill, vertical roller mill or other size reduction equipment, that is not part of an in-line kiln/raw mill, used to grind feed to the appropriate size. Moisture may be added or removed from the feed during the grinding operation. If the raw mill is used to remove moisture from feed materials, it is also, by definition, a raw material dryer. The raw mill also includes the air separator associated with the raw mill.

* * * * *

Small, remote incinerator means an incinerator that combusts solid waste (as that term is defined by the Administrator in 40 CFR part 241) and combusts 3 tons per day or less solid waste and is more than 25 miles driving distance to the nearest municipal solid waste landfill.

Soil treatment unit means a unit that thermally treats petroleum-contaminated soils for the sole purpose of site remediation. A soil treatment unit may be direct-fired or indirect fired. A soil treatment unit is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

Solid waste incineration unit means a distinct operating unit of any facility which combusts any solid (as that term is defined by the Administrator in 40 CFR part 241) waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act. The term ''solid waste incineration unit'' does not include (A) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals, (B) qualifying small power production facilities, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 769(17)(C)), or qualifying cogeneration facilities, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or (C) air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

Space heater means a usually portable appliance for heating a relatively small area. A space heater is not an incinerator, waste-burning kiln, an energy recovery unit or a small, remote incinerator under this subpart.

* * * * *

Waste-burning kiln means a kiln that is heated, in whole or in part, by combusting solid waste (as that term is defined by the Administrator in 40 CFR part 241). A waste-burning kiln does not include a kiln that is feeding non-hazardous secondary ingredients exclusively into the cold end of the kiln.

Wet scrubber means an add-on air pollution control device that uses an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

* * * * *

80. Table 1 to Subpart DDDD of Part 60 is revised to read as follows:

TABLE 1 TO SUBPART DDDD OF PART 60—MODEL RULE—INCREMENTS OF PROGRESS AND COMPLIANCE SCHEDULES

Comply with these increments of progress	By these dates [a]
Increment 1—Submit final control plan.	(Dates to be specified in state plan).
Increment 2—Final compliance.	(Dates to be specified in state plan).[b]

[a] Site-specific schedules can be used at the discretion of the state.

[b] The date can be no later than 3 years after the effective date of state plan approval or December 1, 2005 for CISWI units that commenced construction on or before November 30, 1999. The date can be no later than 3 years after the effective date of approval of a revised state plan or [*DATE 5 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*] for CISWI units that commenced construction on or before June 4, 2010. For small remote incinerators, the date can be no later than 3 years after the effective date of approval of a revised state plan or March 21, 2016 for small remote incinerator CISWI units that commenced construction on or before June 4, 2010.

81. Table 2 to subpart DDDD is amended by:

a. Revising the heading.

b. Revising the entries for ''Hydrogen chloride,'' ''Mercury,'' ''Opacity'' and ''Oxides of nitrogen.''

c. Adding footnotes b and c.

TABLE 2 TO SUBPART DDDD OF PART 60-MODEL RULE—EMISSION LIMITATIONS THAT APPLY BEFORE [DATE TO BE SPECIFIED IN STATE PLAN] [b]

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
* *	* *	*	* *
Hydrogen chloride	62 parts per million by dry volume	3-run average (For Method 26, collect a minimum volume of 120 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
* *	* *	*	* *
Mercury	0.47 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[c]
Opacity	10 percent	Three 1-hour blocks consisting of ten 6-minute average opacity values.	Performance test (Method 9 at 40 CFR part 60, appendix A–4).
* *	* *	*	* *
Oxides of nitrogen	388 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Methods 7 or 7E at 40 CFR part 60, appendix A–4).
* *	* *	*	* *

[b] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or [*DATE 5 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*].
[c] Incorporated by reference, see § 60.17.

82. Table 4 of subpart DDDD is amended by revising the column headings to read as follows:

TABLE 4 TO SUBPART DDDD OF PART 60—MODEL RULE—TOXIC EQUIVALENCY FACTORS

Dioxin/furan isomer	Toxic equivalency factor
* * * *	* * *

83. Table 5 of subpart DDDD is amended by:

a. Revising the entry for ''Annual Report''.

b. Revising the entry for ''Emission limitation or operating limit deviation report''.

TABLE 5 TO SUBPART DDDD OF PART 60—SUMMARY OF REPORTING REQUIREMENT [a]

Report	Due date	Contents	Reference
*	* * *	* *	*
Annual report	No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	• Name and address • Statement and signature by responsible official • Date of report. • Values for the operating limits. • Highest recorded 3-hour average and the lowest 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported. • If a performance test was conducted during the reporting period, the results of the test. • If a performance test was not conducted during the reporting period, a statement that the requirements of § 60.2720(a) were met.	§§ 60.2765 and 60.2770.

TABLE 5 TO SUBPART DDDD OF PART 60—SUMMARY OF REPORTING REQUIREMENT [a]—Continued

Report	Due date	Contents	Reference
		• Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks. • If you are conducting performance tests once every 3 years consistent with § 60.2720(a), the date of the last 2 performance tests, a comparison of the emission level you achieved in the last 2 performance tests to the 75 percent emission limit threshold required in § 60.2720(a) and a statement as to whether there have been any operational changes since the last performance test that could increase emissions.	
*	* * *	* *	*
Emission limitation or operating limit deviation report.	By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year.	• Dates and times of deviation ..... • Averaged and recorded data for those dates. • Duration and causes of each deviation and the corrective actions taken. • Copy of operating limit monitoring data and any test reports. • Dates, times and causes for monitor downtime incidents.	§ 60.2775 and 60.2780.
*	* * *	* *	*

[a] This table is only a summary, see the referenced sections of the rule for the complete requirements.

84. Table 6 to Subpart DDDD is added as follows:

TABLE 6 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO INCINERATORS ON AND AFTER [DATE TO BE SPECIFIED IN STATE PLAN] [a]

For the air pollutant	You must meet this emission limitation [b]	Using this averaging time	And determining compliance using this method
Cadmium	0.0026 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	36 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis) ...	4.6 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.13 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	29 parts per million dry volume	3-run average (For Method 26, collect a minimum volume of 60 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.0036 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Mercury	0.0054 milligrams per dry standard cubic meter.	3-run average (For Method 29 an ASTM D6784–02 (Reapproved 2008) [b], collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008).[c]

TABLE 6 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO INCINERATORS ON AND AFTER [DATE TO BE SPECIFIED IN STATE PLAN] [a]—Continued

For the air pollutant	You must meet this emission limitation [b]	Using this averaging time	And determining compliance using this method
Oxides of nitrogen	53 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter filterable	34 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8).
Sulfur dioxide	11 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4.
Fugitive ash	Visible emissions for no more than 5% of the hourly observation period.	Three 1-hour observation periods	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).

[a] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or [*THE DATE 5 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*].
[b] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.
[c] Incorporated by reference, see § 60.17.

85. Table 7 of Subpart DDDD is added as follows:

TABLE 7 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO ENERGY RECOVERY UNITS AFTER [DATE TO BE SPECIFIED IN STATE PLAN] [a]

For the air pollutant	You must meet this emission limitation [b]		Using this averaging time	And determining compliance using this method
	Liquid/gas	Solids		
Cadmium	0.023 milligrams per dry standard cubic meter.	Biomass—0.00078 milligrams per dry standard cubic meter. Coal—0.058 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.
Carbon monoxide	36 parts per million dry volume.	Biomass—490 parts per million dry volume. Coal—46 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis).	2.9 nanograms per dry standard cubic meter.	Biomass—0.52 nanograms per dry standard cubic meter [c]. Coal—0.51 nanograms per dry standard cubic meter.[c]	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.32 nanograms per dry standard cubic meter.	Biomass—0.12 nanograms per dry standard cubic meter. Coal—0.075 nanograms per dry standard cubic meter.[c]	3-run average (collect a minimum volume of 4 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	14 parts per million dry volume.	0.50 parts per million dry volume.	3-run average (for Method 26, collect a minimum of 120 liters; for Method 26A, collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	0.096 milligrams per dry standard cubic meter.	Biomass—0.0019 milligrams per dry standard cubic meter. Coal—0.0031 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8). Use ICPMS for the analytical finish.

TABLE 7 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO ENERGY RECOVERY UNITS AFTER [DATE TO BE SPECIFIED IN STATE PLAN] [a]—Continued

For the air pollutant	You must meet this emission limitation [b]		Using this averaging time	And determining compliance using this method
	Liquid/gas	Solids		
Mercury	0.031 milligrams per dry standard cubic meter.	0.0020 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008) [b], collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008) [d].
Oxides of nitrogen	76 parts per million dry volume.	Biomass—290 parts per million dry volume. Coal—340 parts per million dry volume.	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter filterable	110 milligrams per dry standard cubic meter.	Biomass—11 milligrams per dry standard cubic meter or 30-day rolling average if PM CEMS is required or being used. Coal—86 milligrams per dry standard cubic meter or 30-day rolling average if PM CEMS is required or being used.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8) if the unit has a design capacity less than or equal to 250 MMBtu/hr; or PM CEMS (performance specification 11 of appendix B and procedure 2 of appendix F of this part) if the unit has a design capacity greater than 250 MMBtu/hr. Use Method 5 or 5I of Appendix A of this part and collect a minimum sample volume of 1 dscm for the PM CEMS correlation testing.
Sulfur dioxide	720 parts per million dry volume.	Biomass—7.3 parts per million dry volume. Coal—650 parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4.
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods.	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).

[a] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or [*DATE 5 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*]

[b] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.

[c] If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to § 60.2720 if all of the other provision of § 60.2720 are met. For all other pollutants that do not contain a footnote "c", your performance tests for this pollutant for at least 2 consecutive years must show that your emissions are at or 75 percent of this limit in order to qualify for skip testing.

[d] Incorporated by reference, see § 60.17.

86. Table 8 of Subpart DDDD is added as follows:

TABLE 8 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO WASTE-BURNING KILNS AFTER [DATE TO BE SPECIFIED IN STATE PLAN] [a]

For the air pollutant	You must meet this emission limitation [b]	Using this averaging time	And determining compliance using this method
Cadmium	0.00082 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).

TABLE 8 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO WASTE-BURNING KILNS AFTER [DATE TO BE SPECIFIED IN STATE PLAN] [a]—Continued

For the air pollutant	You must meet this emission limitation [b]	Using this averaging time	And determining compliance using this method
Carbon monoxide	120 (long kilns)/410 (preheater/precalciner) parts per million dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis)	3.6 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meters).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.075 nanograms per dry standard cubic meter [c].	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Hydrogen chloride	3.0 parts per million dry volume [c]	3-run average (collect a minimum volume of 1 dry standard cubic meter) or 30-day rolling average if HCL CEMS is being used.	Performance test (Method 321 at 40 CFR part 63, appendix A of this part) or HCL CEMS if a wet scrubber is not used.
Lead	0.0043 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 2 dry standard cubic meters).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Mercury	0.011 milligrams per dry standard cubic meter.	30-day rolling average	Mercury CEMS or sorbent trap monitoring system (performance specification 12A or 12B, respectively, of appendix B of this part.)
Oxides of nitrogen	630 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4). Use a span gas with a concentration of 1000 ppm or less.
Particulate matter filterable	9.2 milligrams per dry standard cubic meter.	30-day rolling average	PM CEMS (performance specification 11 of appendix B and procedure 2 of appendix F of this part; Use Method 5 or 5I of Appendix A of this part and collect a minimum sample volume of 2 dscm for the PM CEMS correlation testing.).
Sulfur dioxide	830 parts per million dry volume	3-run average (for Method 6, collect a minimum of 20 liters; for Method 6C, 1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4).

[a] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or [*DATE 5 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*]

[b] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.

[c] If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to § 60.2720 if all of the other provision of § 60.2720 are met. For all other pollutants that do not contain a footnote "c", your performance tests for this pollutant for at least 2 consecutive years must show that your emissions are at or 75 percent of this limit in order to qualify for skip testing.

87. Table 9 of Subpart DDDD is added as follows:

TABLE 9 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO SMALL, REMOTE INCINERATORS AFTER [DATE TO BE SPECIFIED IN STATE PLAN] [a]

For the air pollutant	You must meet this emission limitation [b]	Using this averaging time	And determining compliance using this method
Cadmium	0.61 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Carbon monoxide	20 parts per million dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 10 at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis)	1,200 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	57 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).

TABLE 9 TO SUBPART DDDD OF PART 60—MODEL RULE—EMISSION LIMITATIONS THAT APPLY TO SMALL, REMOTE INCINERATORS AFTER [DATE TO BE SPECIFIED IN STATE PLAN] [a]—Continued

For the air pollutant	You must meet this emission limitation [b]	Using this averaging time	And determining compliance using this method
Hydrogen chloride	220 parts per million dry volume	3-run average (For Method 26, collect a minimum volume of 120 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Lead	2.7 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Mercury	0.0057 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008) [b], collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 or 30B at 40 CFR part 60, appendix A–8) or ASTM D6784–02 (Reapproved 2008) [c].
Oxides of nitrogen	240 parts per million dry volume	3-run average (for Method 7E, 1 hour minimum sample time per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Particulate matter filterable	230 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 1 dry standard cubic meter).	Performance test (Method 5 or 29 at 40 CFR part 60, appendix A–3 or appendix A–8).
Sulfur dioxide	420 parts per million dry volume	3-run average (for Method 6, collect a minimum of 20 liters per run; for Method 6C, 1 hour minimum sample time per run).	Performance test (Method 6 or 6c at 40 CFR part 60, appendix A–4).
Fugitive ash	Visible emissions for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods	Visible emission test (Method 22 at 40 CFR part 60, appendix A–7).

[a] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or [*DATE 5 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*].

[b] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you must meet either the total mass basis limit or the toxic equivalency basis limit.

[c] Incorporated by reference, see § 60.17.

PART 241—SOLID WASTES USED AS FUELS OR INGREDIENTS IN COMBUSTION UNITS

88. The authority citation for part 241 continues to read as follows:

Authority: 42 U.S.C. 6903, 6912, 7429.

Subpart A—General

89. Section 241.2 is amended by:

a. Revising the definition of ''clean cellulosic biomass.''

b. Revising the definition of ''contaminants.''

c. Revising the definition of ''established tire collection programs.''

§ 241.2 Definitions.

* * * * *

Clean cellulosic biomass means those residuals that are akin to traditional cellulosic biomass, including, but not limited to: Agricultural and forest-derived biomass (*e.g.,* green wood, forest thinnings, clean and unadulterated bark, sawdust, trim, tree harvesting residuals from logging and sawmill materials, hogged fuel, wood pellets, untreated wood pallets); urban wood (*e.g.,* tree trimmings, stumps, and related forest-derived biomass from urban settings); corn stover and other biomass crops used specifically for the production of cellulosic biofuels (*e.g.,* energy cane, other fast growing grasses, byproducts of ethanol natural fermentation processes); bagasse and other crop residues (*e.g.,* peanut shells, vines, orchard trees, hulls, seeds, spent grains, cotton byproducts, corn and peanut production residues, rice milling and grain elevator operation residues); wood collected from forest fire clearance activities, trees and clean wood found in disaster debris, clean biomass from land clearing operations, and clean construction and demolition wood. These fuels are not secondary materials or solid wastes unless discarded. Clean biomass is biomass that does not contain contaminants at concentrations not normally associated with virgin biomass materials.

* * * * *

Contaminants means all pollutants listed in Clean Air Act sections 112(b) and 129(a)(4), with modifications outlined in this definition to reflect constituents found in non-hazardous secondary materials prior to combustion. The definition includes the following elemental contaminants that commonly form Clean Air Act section 112(b) and 129(a)(4) pollutants: Antimony, arsenic, beryllium, cadmium, chlorine, chromium, cobalt, fluorine, lead, manganese, mercury, nickel, nitrogen, selenium, and sulfur. The definition does not include the following Clean Air Act section 112(b) and 129(a)(4) pollutants that are either unlikely to be found in non-hazardous secondary materials prior to combustion or are adequately measured by other parts of this definition: Hydrogen chloride (HCl), chlorine gas (Cl_2), hydrogen fluoride (HF), nitrogen oxides (NO_X), sulfur dioxide (SO_2), fine mineral fibers, particulate matter, coke oven emissions, diazomethane, white phosphorus, titanium tetrachloride, m-cresol, o-cresol, p-cresol, m-xylene, o-xylene, and p-xylene.

* * * * *

Established tire collection program means a comprehensive collection system or contractual arrangement that ensures scrap tires are not discarded and are handled as valuable commodities through arrival at the combustion facility.

* * * * *

Subpart B—Identification of Non-Hazardous Secondary Materials that are Solid Wastes When Used as Fuels or Ingredients in Combustion Units

90. Amend 241.3 as follows:

a. Revise paragraph (a),

b. Remove and reserve paragraphs (b)(2)(i) and (ii),

c. Revise paragraph (d)(1)(iii).

§ 241.3 Standards and Procedures for Identification of Non-Hazardous Secondary Materials that are Solid Wastes When Used as Fuels or Ingredients in Combustion Units.

(a) Except as provided in paragraph (b) of this section or in 241.4(a) of this subpart, non-hazardous secondary materials that are combusted are presumed to be solid wastes, unless a petition is submitted to, and a determination granted by, the Regional Administrator pursuant to paragraph (c) of this section. The criteria to be addressed in the petition, as well as the process for making the non-waste determination, are specified in paragraph (c) of this section.

* * * * *

(d) * * *

(1) * * *

(iii) The non-hazardous secondary material must contain contaminants or groups of contaminants at levels comparable in concentration to or lower than those in traditional fuel(s) which the combustion unit is designed to burn. In determining which traditional fuel(s) a unit is designed to burn, persons can choose a traditional fuel that can be or is burned in the particular type of boiler, whether or not the combustion unit is permitted to burn that traditional fuel. In comparing contaminants between traditional fuel(s) and a non-hazardous secondary material, persons can use ranges of traditional fuel contaminant levels compiled from national surveys, as well as contaminant level data from the specific traditional fuel being replaced. Such comparisons are to be based on a direct comparison of the contaminant levels in both the non-hazardous secondary material and traditional fuel(s) prior to combustion.

* * * * *

91. Add § 241.4 to read as follows:

§ 241.4 Non-Waste Determinations for Specific Non-Hazardous Secondary Materials When Used as a Fuel.

(a) The following non-hazardous secondary materials are not solid wastes when used as a fuel in a combustion unit:

(1) Scrap tires that are not discarded and are managed under the oversight of established tire collection programs, including tires removed from vehicles and off-specification tires.

(2) Resinated wood.

(b) Any person may submit a rulemaking petition to the Administrator to identify additional non-hazardous secondary materials to be listed in paragraph (a) of this section. Contents and procedures for submittal of the petitions include the following:

(1) Each petition must be submitted to the Administrator by certified mail and must include:

(i) The petitioner's name and address;

(ii) A statement of the petitioner's interest in the proposed action;

(iii) A description of the proposed action, including (where appropriate) suggested regulatory language; and

(iv) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information. Where the non-hazardous secondary material does not meet the legitimacy criteria, the applicant must explain why such non-hazardous secondary material should be considered a non-waste fuel, balancing the legitimacy criteria with other relevant factors.

(2) The Administrator will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision, either in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, in the **Federal Register** for written public comment.

(3) Upon the written request of any interested person, the Administrator may, at its discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Administrator may in any case decide on its own motion to hold an informal public hearing.

(4) After evaluating all public comments the Administrator will make a final decision by publishing in the **Federal Register** a regulatory amendment or a denial of the petition.

(5) The Administrator will grant or deny a petition based on the weight of evidence showing the following:

(i) The non-hazardous secondary material has not been discarded in the first instance and is legitimately used as a fuel in a combustion unit, or if discarded, has been sufficiently processed into a material that is legitimately used as a fuel.

(ii) Where any one of the legitimacy criteria in section 241.3(d)(1) is not met, that the use of the non-hazardous secondary material is integrally tied to the industrial production process, that the non-hazardous secondary material is functionally the same as the comparable traditional fuel, or other relevant factors as appropriate.

[FR Doc. 2011–31648 Filed 12–22–11; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0790; FRL–9503–3]

RIN 2060–AR14

National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reconsideration of final rule.

SUMMARY: On March 21, 2011, the EPA promulgated national emission standards for the control of hazardous air pollutants from two area source categories: industrial boilers, and commercial and institutional boilers. On that same date, the EPA announced that it was convening a proceeding for reconsideration of certain portions of those final emission standards. After promulgation, the Administrator received petitions for reconsideration of certain provisions in the final rule. In this action, the EPA is proposing for reconsideration specific elements and accepting public comment on those elements. We are not requesting comment on any other provisions of the final rule.

In this action, the EPA is proposing a limited number of amendments to the final rule. In addition, the EPA is proposing amendments and technical corrections to the final rule to clarify some applicability and implementation issues raised by stakeholders subject to the final rule.

DATES: *Comments.* Comments must be received on or before February 21, 2012.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by January 3, 2012, a public hearing will be held on January 9, 2012. For further information on the public hearing and requests to speak, contact Ms. Pamela Garrett at (919) 541–7966 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, North Carolina, or an alternate site nearby.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0790, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2006–0790.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2006–0790.
- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0790.
- *Hand Delivery:* In person or by Courier, deliver comments to: EPA Docket Center (2822T), Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0790. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. James Eddinger, Energy Strategies Group (D243–01), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5426; fax number: (919) 541–5450; email address: *eddinger.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of this Document. The following outline is provided to aid in locating information in this preamble.

I. General Information
  A. Does this notice of reconsideration apply to me?
  B. What should I consider as I prepare my comments to the EPA?
  C. How do I obtain a copy of this document and other related information?
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  A. Subcategory for Seasonally Operated Boilers
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  I. Using the Upper Prediction Limit (UPL) for Setting Carbon Monoxide Emission Limits
  J. Establishing GACT Emission Limits for Biomass and Oil-Fired Boilers
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  A. Electric and Residential Boilers
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  C. Timing of Subsequent Performance Tests
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VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
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H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this notice of reconsideration apply to me?

The regulated categories and entities potentially affected by this action include:

Industry category	NAICS code[1]	Examples of regulated entities
Any area source facility using a boiler as defined in the final rule ..	321	Wood product manufacturing.
	11	Agriculture, greenhouses.
	311	Food manufacturing.
	327	Nonmetallic mineral product manufacturing.
	424	Wholesale trade, nondurable goods.
	531	Real estate.
	611	Educational services.
	813	Religious, civic, professional, and similar organizations.
	92	Public administration.
	722	Food services and drinking places.
	62	Health care and social assistance.
	22111	Electric power generation.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this reconsideration action. To determine whether your facility may be affected by this reconsideration action, you should examine the applicability criteria in 40 CFR 63.11193 of subpart JJJJJJ (National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources). If you have any questions regarding the applicability of the final rule to a particular entity, consult either the air permit authority for the entity or your EPA regional representative, as listed in 40 CFR 63.13.

B. What should I consider as I prepare my comments to the EPA?

Submitting CBI. Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or Email. Send or deliver information identified as CBI to only the following address: Mr. James Eddinger, c/o OAQPS Document Control Officer (Room C404–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attn: Docket ID No. EPA–HQ–OAR–2006–0790.

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a disk or CD–ROM that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

C. How do I obtain a copy of this document and other related information?

Docket. The docket number for this action and the final rule (40 CFR part 63, subpart JJJJJJ) is Docket ID No. EPA–HQ–OAR–2006–0790.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this action is available on the WWW through the Technology Transfer Network (TTN) Web site. Following signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Background Information

Section 112(d) of the Clean Air Act (CAA) requires the EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of hazardous air pollutants (HAP) that are listed for regulation under CAA section 112(c). A major source is any stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

On March 21, 2011 (76 FR 15554), we issued the NESHAP for industrial, commercial, and institutional area source boilers pursuant to CAA sections 112(c)(3), 112(c)(6), and 112(k)(3)(B).

CAA section 112(k)(3)(B) directs the EPA to identify at least 30 HAP that, as a result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. The EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999) (Strategy). Specifically, in the Strategy,

the EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) of the CAA requires the EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. Under CAA section 112(d)(5), the EPA may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies (''GACT'') or management practices by such sources to reduce emissions of hazardous air pollutants.''

While GACT may be a basis for standards for most types of HAP emitted from area sources, CAA section 112(c)(6) requires that the EPA list categories and subcategories of sources assuring that sources accounting for not less than 90 percent of the aggregate emissions of each of seven specified HAP are subject to standards under CAA sections 112(d)(2) or (d)(4), which require the application of the more stringent MACT. The seven HAP specified in CAA section 112(c)(6) are as follows: Alkylated lead compounds, polycyclic organic matter (POM) as 7-polynuclear aromatic hydrocarbons (PAH), hexachlorobenzene, mercury, polychlorinated biphenyls (PCBs), 2,3,7,8-tetrachlorodibenzofurans, and 2,3,7,8-tetrachlorodibenzo-p-dioxin.

As noted in the preamble to the final rule, (76 FR 15556, March 21, 2011), we listed area source industrial boilers and commercial/institutional boilers combusting coal under CAA section 112(c)(6) based on the source categories' contribution of mercury and POM, and under CAA section 112(c)(3) for their contribution of arsenic, beryllium, cadmium, lead, chromium, manganese, nickel, ethylene dioxide, and PCBs, as well as mercury and POM. We promulgated final standards for coal-fired area source boilers to reflect the application of MACT for mercury and POM, and to reflect GACT for the urban HAP other than mercury and POM.

We listed industrial and commercial/institutional boilers combusting oil or biomass under CAA section 112(c)(3) for their contribution of mercury, arsenic, beryllium, cadmium, lead, chromium, manganese, nickel, POM, ethylene dioxide, and PCBs. For boilers firing oil or biomass, the final standards reflect GACT for all of the urban HAP.

On March 21, 2011, we also published a notice to initiate the reconsideration of certain aspects of the final rule for area source industrial, commercial, and institutional boilers (76 FR 15266). In that notice, we announced that we would identify specific elements of this rule for which we believe further public comment is appropriate. We also announced that we would develop proposals to modify certain provisions after more fully evaluating the data and comments received in response to the original proposed area source rule published on June 4, 2010 (75 FR 31896). Finally, we recognized that certain issues of central relevance to these rules arose after the period for public comment or may have been impracticable to comment upon. Therefore, we concluded that reconsideration was appropriate under section 307(d)(7)(B) of the CAA. Although we took final action and promulgated the area source boiler rule, and believe that the final rule reflects reasonable approaches consistent with the requirements of the CAA, some of the issues identified in the comments raised difficult technical issues that we believe may benefit from additional public involvement.

In the March 21, 2011, notice, we identified the following issues affecting area source boilers as being appropriate and consistent with the requirements of the Act, but for which we believe reconsideration and additional opportunity for public review and comment should be obtained:

- Establishment of standards for biomass and oil-fired area source boilers based on generally available control technology.
- Providing an affirmative defense for malfunction events for area source boilers.

The following additional issues concern actions taken in the final rule for which we believe reconsideration under section 307(d) and, potentially, further revisions may be warranted because they involve issues of central relevance that arose after the period for public comment or may have been impracticable to comment upon:

- Setting PM standards under generally available control technology for oil-fired area source boilers.
- Certain findings regarding the applicability of Title V permitting requirements for area source boilers.

Additional information concerning issues and concerns presented by commenters can be found in Docket No. EPA–HQ–OAR–2006–0790 for the final area source boiler rule under reconsideration in today's notice.

III. Actions We Are Taking

In this notice, we are requesting comment on the four issues listed in section II of this preamble, which were identified in the March 21, 2011 notice, and we are also convening reconsideration of, and requesting comment on, certain issues raised by Petitioners in their petitions for reconsideration. Section IV of this preamble summarizes these issues and discusses our proposed responses to each issue.

We are also proposing technical corrections to correct inaccuracies and inadvertent oversights promulgated in the final rule. We are also proposing several amendments to clarify some applicability and implementation issues raised by stakeholders subject to the final rule. Section V of this preamble describes these corrections and amendments and provides the rationale for these corrections and amendments. These proposed changes, if finalized, would for example:

- Clarify certain regulatory requirements, such as whether compliance is based on a value calculated as a block average from recorded data.
- Provide greater flexibility to certain facilities for which the current compliance requirements are impractical, such as increasing the time between tune-ups for seasonally operated boilers.
- Correct certain rule drafting or printing errors, such as correcting cross references among rule sections, removing paragraphs that are no longer relevant, or correcting the placement of text in a table.

We are seeking public comment only on the issues specifically identified in this notice. We will not respond to any comments addressing other aspects of the final rule or any other related rulemakings.

IV. Discussion of Issues for Reconsideration

This section of the preamble contains the EPA's basis for our proposed responses to the issues identified in the petitions for reconsideration. We solicit comment on all proposed responses and revisions discussed in the following sections.

A. Subcategory for Seasonally Operated Boilers

We are proposing to create a new subcategory for seasonally operated boilers. For these seasonally operated boilers, we are proposing to amend 40 CFR 63.11223 to specify, after an initial tune up by the compliance date, they would be required to complete a tune-up every five years, instead of on a biennial basis as is required for non-seasonal boilers.

Agriculture industry representatives, specifically those from the sugar industry, noted that many boilers

operate only seasonally, and these boilers are generally not equipped to measure carbon monoxide and oxygen. As a result, stack testing must be performed to measure carbon monoxide and oxygen as a component of the tune-up, as required by 40 CFR 63.11223(b)(5). The petitioners requested that the EPA reconsider the frequency of tune-ups for seasonal boilers. Specifically, the petitioners requested a reduction in the required frequency of subsequent tune-ups to the lesser of every 24 months of operation or every six to eight years. The petitioners commented that the final rule is more burdensome on industries with short seasonal operations than non-seasonal industries. The seasonal nature means that each boiler must undergo tune-ups every six or eight months of operation. This, the petitioners commented, is far more frequent than envisioned by the final rule.

We agree with the industry representatives on this issue and are proposing to address the issue by creating a subcategory for seasonal boilers and amending 40 CFR 63.11223 to specify that seasonal boilers would be required to complete the initial tune-up by March 21, 2014, and a subsequent tune-up every five years after the initial tune-up.

Seasonally operated boilers would be defined as follows:

Seasonal boiler means a boiler that undergoes a shutdown for a period of at least 7 consecutive months (or 210 consecutive days) due to seasonal market conditions. This definition only applies to boilers that would otherwise be included in the biomass subcategory or the oil subcategory.

B. Exemption for Temporary Boilers

We are proposing to amend 40 CFR 63.11195 (Are any boilers not subject to this subpart?) by adding temporary boilers to the list of boilers not subject to subpart JJJJJJ. In the final major source rule for boilers, the EPA excluded temporary boilers from the source category (see 40 CFR 63.7491(j), and 76 FR 15665 (March 21, 2011)), and is now proposing to do the same in the area source rule. Owners and operators of regulated sources have pointed out that temporary boilers are small (less than 10 MMBtu/hr heat input) and are generally owned and operated by contractors, rather than the facility. As a result, they are not included in the facility's operating permits because state and federal CAA operating permit programs have historically classified such units as insignificant sources. The owners and operators also noted that compliance with the work practice requirements applicable to these small boilers would be complicated because they are typically located on site for less than a year, but would be subject to biennial management practice requirements.

We agree that the source category identified in subpart JJJJJJ should specifically exclude these temporary boilers because they have been considered insignificant sources, and were not included in the EPA's analysis of the source category. Therefore, we are proposing to amend 40 CFR 63.11195 by adding temporary boilers to the list of boilers not subject to subpart JJJJJJ.

Temporary boilers would be defined in 40 CFR 63.11237 as:

''* * * any gaseous or liquid fuel boiler that is designed to, and is capable of, being carried or moved from one location to another by means of, for example, wheels, skids, carrying handles, dollies, trailers, or platforms. A boiler is not a temporary boiler if any one of the following conditions exists:

(1) The equipment is attached to a foundation.

(2) The boiler or a replacement remains at a location for more than 12 consecutive months. Any temporary boiler that replaces a temporary boiler at a location and performs the same or similar function will be included in calculating the consecutive time period.

(3) The equipment is located at a seasonal facility and operates during the full annual operating period of the seasonal facility, remains at the facility for at least 2 years, and operates at that facility for at least 3 months each year.

(4) The equipment is moved from one location to another within the facility in an attempt to circumvent the residence time requirements of this definition.

C. Initial Compliance Schedule for Existing Boilers

We are proposing to amend 40 CFR 63.11196 to specify that all existing boilers subject to the tune-up requirement would have two years (by March 21, 2013) in which to demonstrate initial compliance, instead of one year to demonstrate initial compliance.

Industry representatives, specifically those with large numbers of affected boilers or seasonal boilers, note that many boilers are not equipped to measure carbon monoxide and oxygen. As a result, stack testing must be performed to measure carbon monoxide and oxygen as a component of the tune-up, as required by 40 CFR 63.11223(b)(5). The industry members have noted that they cannot schedule and complete the testing needed to comply with the tune-up requirements during the one year initial compliance period, as specified in the final rule. The industry members also noted that the three-year initial compliance date originally provided in the proposed rule would have allowed for the staggering of the tune-ups over three years, while the final rule requires initial tune-ups be completed in one year. Finally, industry members and other stakeholders did not have an adequate opportunity to comment on the one-year compliance period for the tune-up requirement.

We agree with the industry representatives on this issue and are proposing to address the issue by allowing two years to complete the initial compliance demonstration of the tune-up requirements applicable to existing boilers. Even though existing boilers that are subject to emission limits have three years to demonstrate initial compliance, we believe the proposed change to the tune-up initial compliance period is appropriate because compliance with the tune-up requirement does not involve the installation of control equipment. Providing the amended compliance schedule would eliminate the potential need to approve alternative compliance schedules for facilities with multiple boilers or seasonal boilers that could not comply with the one-year compliance requirement.

We are specifically requesting comment on whether the initial compliance period for the tune-up requirement should be extended to three years.

If the Agency has not taken final action on the initial compliance date for tune-ups prior to the date (March 21, 2012) for initial compliance, we could stay the effectiveness of the rule for 90 days, as allowed under CAA section 307(d)(7)(B), so that the Agency could complete reconsideration.

D. Definition of Natural Gas Curtailment

We are proposing to amend the definition of ''period of natural gas curtailment or supply interruption'' to clarify that a curtailment does not include normal market fluctuations in the price of gas that are not associated with periods of supplier delivery restrictions. We are also proposing to amend the definition to indicate that periods of supply interruption that are beyond control of the facility can also include on-site natural gas system emergencies and equipment failures, and that legitimate periods of supply interruption are not limited to off-site circumstances. Finally, we are proposing to revise the term and the definition so that it includes the curtailment of any gaseous fuel, and is not limited to just natural gas.

The definition would be amended to read as follows:

Period of gas curtailment or supply interruption means a period of time during

which the supply of gaseous fuel to an affected facility is halted for reasons beyond the control of the facility. The act of entering into a contractual agreement with a supplier of natural gas established for curtailment purposes does not constitute a reason that is under the control of a facility for the purposes of this definition. An increase in the cost or unit price of natural gas due to normal market fluctuations not during periods of supplier delivery restriction does not constitute a period of natural gas curtailment or supply interruption. On-site gaseous fuel system emergencies or equipment failures may qualify as periods of supply interruption when the emergency or failure is beyond the control of the facility.

E. Monitoring Carbon Monoxide Emissions

We are proposing to amend the monitoring requirements in 40 CFR 63.11224(a) to allow sources subject to a carbon monoxide emission limit the option to install, operate and maintain a carbon monoxide and oxygen continuous emission monitoring system (CEMS). The CEMS would be installed, operated, and maintained according to Performance Specifications 3 and 4A at 40 CFR part 60, appendix B, and according to the site-specific monitoring plan that each facility is already required to develop according to the final rule published on March 21, 2011. The CEMS would also be required to complete a performance evaluation, also according to Performance Specifications 3 and 4A.

The rule currently requires sources subject to a carbon monoxide emission limit to demonstrate compliance by measuring carbon monoxide emissions while also monitoring the oxygen content of the exhaust, and then demonstrating continuous compliance by monitoring and complying with an oxygen content operating limit that is established during the performance test.

Under the proposed amendments, sources would have the option to demonstrate continuous compliance by either monitoring both carbon monoxide and oxygen to demonstrate compliance with the carbon monoxide emission limit, corrected to 3 percent oxygen, or by complying with an operating limit for oxygen content established during the performance test.

Several facilities have indicated that they already have carbon monoxide CEMS, and should be able to rely on the data from those CEMS to demonstrate compliance, rather than from a performance test and from compliance with the operating limit. They noted that these proposed amendments would also resolve any compliance questions that may arise if their oxygen monitor showed a deviation from the operating limit, but the CEMS still showed compliance with the carbon monoxide emission limit.

We are proposing to amend the oxygen monitoring requirements to allow for the use of continuous oxygen trim analyzer systems. These systems would be defined as a system of monitors that is used to maintain excess air at the desired level in a combustion device. A typical system consists of a flue gas oxygen and/or carbon monoxide monitor that automatically provide a feedback signal to the combustion air controller. Owners and operators would be required to operate the oxygen trim system with the oxygen level set at the minimum percent oxygen by volume that is established as the operating limit for oxygen during the carbon monoxide performance test. We are also removing the requirement that the oxygen monitor be located at the outlet of the boiler, so that it can be located either within the combustion zone or at the outlet as a flue gas oxygen monitor.

F. Averaging Times

The EPA has determined the 30 day rolling average for parameter monitoring and compliance with operating limits is appropriate for this rule. The operating limits established through performance testing in this rule represent short term process and control operating conditions representative of compliance. Concerns of variability outside the operators control such as fuel content, seasonal factors, load cycling, and infrequent hours of needed operation prompted us to look at longer averaging periods on which to base operating compliance determination. We are aware from studies of emissions over long averaging periods that long term (e.g., 30 day) average emissions for operating in compliance will have a variability of about half of that represented by the results of short term testing. Given that short term tests are representative of distinct points along a continuum of that inherent operational variability, we believe it appropriate to provide a means for the source operator to account for that variability by applying a long term average for establishing compliance. We expect more problematic control system variability (e.g. ESP transformer failure or scrubber venturi fan failure) to result in deviations from a 30-day average relative to compliance almost as much as for a shorter term average.

G. Affirmative Defense Language

The EPA finalized affirmative defense provisions for malfunctions and, as part of this reconsideration proposal, we are soliciting comments on the affirmative defense provisions that were included in the final rule.

H. Tune-up Work Practices

1. Requirements for Small Units. Petitioners requested that the EPA reconsider the tune-up work practices for a subset of very small units. Specifically, petitioners requested that small oil-fired boilers (petitioners defined ''small'' at various levels between 2 MMBtu/hr and 10 MMBtu/hr) be exempted from the rule. While the EPA disagrees that small units should be exempt from the rule, the EPA agrees that for the smallest units, a decreased tune-up frequency is appropriate. The large number of small oil-fired units that can be located at an individual facility, particularly an institution, provides logistical issues with completion of tune-ups on a biennial basis. We are proposing to require an initial tune-up by March 21, 2014, the compliance date for this rule, and to change the requirement for subsequent tune-ups only for oil-fired boilers equal to or less than 5 MMBtu/hr to a tune-up once every 5 years.

2. Conducting Initial Tune-ups at New Sources. Petitioners requested that the EPA clarify the timing of tune-ups with respect to the compliance dates for existing and new sources. All emission standards must be met by the compliance date, even if compliance demonstrations are sometimes allowed after the compliance date. In order to meet the requirements of the rule, tune-ups must, therefore, be completed by the compliance date for existing sources. For new units, we are proposing to remove the requirement for the initial tune-up. The EPA anticipates that new units will typically be tuned during the startup process. Thus, new units would be required to complete the applicable biennial (> 5MMBtu/h) or five-year (≤ 5MMBtu/h) tune-up no later than 25 months or 61 months, respectively, after the initial startup of the new or reconstructed affected boiler.

I. Using the Upper Prediction Limit (UPL) for Setting Carbon Monoxide Emission Limits

We are proposing to amend the final carbon monoxide emission limit for coal-fired boilers to reflect a revised analysis that uses the original 99 percent confidence level in determining the UPL. In the final rule, the EPA selected the use of a 99.9 percent confidence interval for calculating the MACT floor for CO emissions. A petitioner requested reconsideration of this selection given the fact that the EPA used a 99 percent confidence interval for all of the other emission limits in the

final rule. The petitioner pointed out that if the data are highly variable, the 99 percent confidence interval should adequately reflect the variability of emissions as well as for the data sets for other pollutants. In the development of the final rule, the 99.9 percent confidence interval was selected in part because the standards covered periods of startup and shutdown, while the data did not reflect CO emissions during those periods. While the EPA finalized work practice standards for startup and shutdown periods, the selection of the confidence interval was not revisited due to time constraints. The EPA is now proposing to use a 99 percent confidence interval in order to maintain a consistent methodology with the development of the MACT floors for other pollutants, and because optional CO CEMS-based limits are being proposed that would allow sources additional flexibility in meeting the requirements of the rule.

In the revised analysis, we have also removed the data from a boiler for which only two test runs were completed in measuring carbon monoxide emissions. The required number of test runs for accurately measuring emissions and demonstrating compliance is three test runs. Therefore, we determined that the datum from this unit was not representative and we excluded it from the data set upon which we performed the revised analysis.

Based on the results of the revised analysis, we are proposing to amend the carbon monoxide emission limit for new and existing coal-fired boilers from 400 parts per million (ppm) by volume on a dry basis, corrected to 3 percent oxygen, to 420 ppm by volume on a dry basis, corrected to 3 percent oxygen.

J. Establishing GACT Emission Limits for Biomass and Oil-Fired Boilers

We are taking comment on basing the final standards for biomass- and oil-fired area source boilers on generally available control technology (GACT) instead of based on maximum achievable control technology (MACT) as were the proposed standards.

We stated in the preamble (75 FR 31904) to the proposed rule, that both industrial boilers and institutional/commercial boilers were on the list of CAA section 112(c)(6) source categories for mercury and POM. Section 112(c)(6) requires MACT standards for each of the pollutants needed to achieve regulation of 90 percent of the emissions of the relevant pollutant. In contrast, CAA section 112(c)(3) allows the EPA to establish standards under GACT instead of MACT for urban HAP. At proposal, we believed that we had to regulate POM from coal-fired, biomass-fired, and oil-fired area source boilers and mercury from coal-fired area source boilers in order to meet the requirement in section 112(c)(6). As such, we proposed MACT-based limits for POM for all subcategories and mercury for the coal subcategory. However, based on the information we received after proposal in developing standards for various other source categories, such as major source boilers, gold mines, commercial and industrial solid waste incinerators, and other categories, we determined only coal-fired area source boilers were necessary to meet the 90 percent requirement set forth in section 112(c)(6) for POM and mercury in the final rule.

In the proposed rule published on June 4, 2010 (75 FR 31896) for the biomass and oil subcategories, all new biomass and oil-fired boilers would have been subject to numerical emission limits for both PM (GACT-based) and CO (MACT-based) as surrogates for other HAP. Existing biomass and oil-fired boilers equal to or greater than 10 million British thermal units (Btu) per hour heat input capacity would have been subject to a MACT-based numerical emission limits for CO, and would have needed a one-time energy assessment. Existing boilers with heat input capacity less than 10 million Btu per hour would have been required to have a MACT-based work practice standard, as allowed under CAA section 112(h), of a biennial tune-up in lieu of being subject to a numerical CO limit.

The final standards for area source biomass- and oil-fired boilers published on March 21, 2011, required these boilers to meet the following emission limitations:

- New boilers with heat input capacity greater than 10 million Btu per hour that are biomass-fired or oil-fired must meet a GACT-based numerical emission limits for PM.
- New boilers with heat input capacity greater than 10 million Btu per hour that are biomass-fired or oil-fired must comply with work practice standards to minimize the boiler's startup and shutdown periods following the manufacturer's recommendations, or the manufacturer's recommendations for a unit of similar design.
- Existing boilers with heat input capacity greater than 10 million Btu per hour that are biomass-fired or oil-fired must have a one-time energy assessment performed by a qualified energy assessor.
- All new and existing units, regardless of size, that are biomass-fired or oil-fired must have a GACT-based tune-up biennially (every two years).

The EPA's rationale for the changes between proposal and promulgation for the biomass- and oil-fired boilers can be found in the preamble to the promulgated area source standards (76 FR 15565–15567 and 15574–15575, March 21, 2011). As explained in the preamble to the final rule, rather than require a numeric MACT-based limit for CO as a surrogate for the individual organic urban HAP (including POM), new and existing biomass- and oil-fired boilers must meet GACT requirements consisting of management practice requirements. For the purposes of regulating PM from new boilers, we concluded that the GACT standards should consist of numeric emission limits for units with heat input capacities greater than 10 million Btu per hour or greater because these new units will be subject to the new source performance standard (NSPS) emission limits for PM, and the NSPS will require PM emissions testing. For units with capacity less than 10 million Btu per hour, GACT does not include a numerical emission limit because of technical limitations of testing PM emissions from boilers with small diameter stacks.

We are accepting comment on basing the final standards for these two subcategories of area source boilers on GACT, but we are not proposing any amendments to these standards at this time.

K. Energy Assessment

1. Scope. Petitioners requested that the EPA clarify the scope of the energy assessment. Specifically, petitioners requested that the scope be clearly limited to only those energy use systems, located on-site, associated with the affected boilers and process heaters. The final definition for ''Energy use system'' was intended only to list examples of potential systems that may use the energy generated by affected boilers and process heaters. We did not intend that the energy assessment would include energy use systems using electricity purchased from an off-site source. We also did not intend that the energy assessment include energy use systems located off-site. We have revised the definition of ''Energy assessment'' to better clarify our intent.

2. Compliance Date. Petitioners requested that the EPA clarify the due date of the energy assessment. All emission standards must be met by the compliance date (March 21, 2014), even if compliance demonstrations are sometimes allowed after the compliance date. In order to meet the requirements

of the rule, energy assessments must, therefore, be completed by the compliance date (March 21, 2014) for existing sources.

3. Maximum Duration Requirements. Petitioners requested that the EPA reconsider the stated ''maximum time'' to conduct the energy assessment because the maximum times were not included in the proposal and stakeholders had no opportunity to comment. The concern raised by petitioners is that, as the final definition of ''Energy assessment'' is worded, a deviation and a potential violation could occur if the energy assessment effort exceeds these time limits. Our intent for including the ''maximum time'' in the final rule definition was to minimize the burden on the smaller fuel-use facilities, many of which are likely small entities, by limiting the extent of the energy assessment. Our concern was that if there was no time limit these small facilities would have no means to limit the time/effort of an outside energy assessor that is contracted to perform the energy assessment. We have revised the definition of ''Energy assessment'' to change the maximum time from one-day to 8 technical hours and from three-day to 24 technical hours and to allow sources to perform longer assessments at their discretion.

L. Setting PM Standards Under Generally Available Control Technology for Oil-Fired Area Source Boilers

The EPA's rationale for finalizing PM emissions limits, based on GACT, for new oil-fired area source boilers can be found in the preamble to the promulgated area source standards (76 FR 15574). We are not proposing any changes to the PM limits for new oil-fired area source boilers. We are only soliciting comments on the final PM limits for new oil-fired area source boilers.

M. Title V Permitting Requirements

In the proposed rule published on June 4, 2010 (75 FR 31925), we proposed to exempt area sources from the requirement to obtain a title V permit, if they were not an area source as a result of installing a control device on a boiler after November 15, 1990. In other words, this exemption would have only applied to ''natural'' area sources and would not have applied to ''synthetic'' area sources that would otherwise have been major sources but for the control device. In the final rule, in response to comments and after a full review of the record, we extended the exemption to all area sources, including major sources that became synthetic area sources by installing air pollution controls. We explained that we lacked sufficient information at that time to distinguish from other synthetic and natural area sources those sources which have applied controls to boilers in order to become area sources.[1] As a result, the rationale for exempting most area sources subject to this rule as explained in the proposal preamble (see 75 FR 31910 to 31913, June 4, 2010) was also relevant for those sources which we proposed to permit. Thus, no area sources subject to subpart JJJJJJ are required to obtain a title V permit as a result of being subject to subpart JJJJJJ.

After promulgation of the final boiler area source rule, we received a petition to reconsider the decision to not require title V permits for area source boilers in the final rule, and to reconsider the decision to extend the exemption to include synthetic area sources. The petition from Sierra Club is in the docket for today's rule.[2] The petition disputes our conclusion that title V permitting is unnecessarily burdensome; discusses the benefits of permitting, including compliance benefits; contests our estimation of the costs of permitting; and challenges our determination to extend the proposed exemption from title V permitting to include synthetic area sources.

We are not proposing any changes to the title V exemption at this time. We invite comment on the rationale we expressed in the March 21, 2011 final rule as well as on the arguments outlined in the petition for reconsideration. Additionally, with respect to the issue of exempting synthetic area sources, we invite comment on our additional analysis of the petitioner's issue, presented below.

At proposal, we estimated that about 137,000 area source facilities are in the category, including schools, hospitals, and churches. *See* 75 FR 31912. We also estimated that at least 48 synthetic area sources reduced their HAP emissions to below the major source threshold by installing air pollution controls. *See* 75 FR 31911. The total number of facilities that are likely to be synthetic area sources for HAP emissions is likely to be a small proportion (e.g., less than 1 percent) of the total population of area source facilities in the category.

Those facilities that are synthetic minor sources for HAP may already have a title V permit for other reasons. For example they could still be major sources for criteria pollutants, or may be subject to NSPS. The title V exemption in subpart JJJJJJ does not affect the applicability of title V under those other programs and facilities required to obtain a title V permit under those other programs would still be required to have a permit.

The presence of an exemption from title V permitting for synthetic area sources under subpart JJJJJJ would still mean that synthetic area sources would likely be subject to more stringent permitting and monitoring requirements than natural area sources. In order for a facility to be treated as a synthetic area source due to the installation of controls, the facility still has a legal duty to use the control equipment because the control equipment requirement must be Federally enforceable. The use of the control is not optional and must be continued.

Facilities that are synthetic minors because of add-on controls are similar in size and sophistication to those that are natural area sources and the added burden of obtaining and complying with a title V permit would be disproportionate to any added environmental benefit, after accounting for the relatively small size differences between synthetic minor and natural area source facilities. The uncontrolled emissions are generally on the same order of magnitude as the emissions of natural area sources, and the facilities and owners are comparable in size.

V. Technical Corrections and Clarifications

We are proposing several technical corrections. These amendments are being proposed to correct inaccuracies and oversights that were promulgated in the final rule. These proposed changes are summarized in Table 1 of this preamble and described in more detail in the paragraphs that follow.

[1] In the preamble to the proposed area source NESHAP, we estimated that at least 48 synthetic area sources reduced their emissions to below the major source threshold by installing air pollution control devices. (75 FR 31911, June 4, 2010.)

[2] [Citation to docket for the Earthjustice *et al.* petition.]

TABLE 1—MISCELLANEOUS TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART JJJJJJ

Section of subpart JJJJJJ	Description of proposed correction
40 CFR 63.11195	Adding residential boilers and electric boilers to the list of boilers not subject to subpart JJJJJJ.
40 CFR 63.11195(c)	Clarifying the language in this paragraph to provide an exemption stating ''unless such units do not combust hazardous waste and combust comparable fuels.''
40 CFR 63.11210	Revising paragraph (d) and adding a new paragraph (e) to clarify the dates by which new and reconstructed affected boilers need to demonstrate initial compliance.
40 CFR 63.11210(g)	Adding a new paragraph (g) to clarify the dates by which affected boilers that switch subcategories need to demonstrate compliance.
40 CFR 63.11211(b)(2)	Removing the second sentence of that paragraph.
40 CFR 63.11220	Removing paragraphs (b) through (d) because they are not relevant, and renumber paragraph (e) as (b).
40 CFR 63.11221	Clarifying the monitoring data collection requirements and the meaning of a ''deviation'' with respect to collecting monitoring data.
40 CFR 63.11223(b)	Clarifying the requirements for units that burn more than one type of fuel.
40 CFR 63.11223(c)	Adding a new paragraph to allow for a triennial tune-up for seasonal boilers.
40 CFR 63.11223(d)	Including oil-fired and biomass-fired boilers in the requirement to minimize the time spent in startup and shutdown periods.
40 CFR 63.11224(c)(1) and (c)(2)	Correcting a cross reference error.
40 CFR 63.11224(b)	Clarifying the requirements for the annual and biennial compliance reports.
40 CFR 63.11224(c)	Clarifying the record keeping requirements.
40 CFR 63.11225(b)	Clarifying the requirements for compliance reports.
40 CFR 63.11225(d)	Revising to allow for computer access of records.
40 CFR 63.11225(g)	Revising to include physical changes to the boiler that may also result in the applicability of a different subcategory.
40 CFR 63.11237	Revising the definitions for ''Annual heat input basis,'' ''Biomass subcategory,'' ''Boiler,'' ''Energy assessment,'' ''Gas-fired boiler,'' ''Hot water heater,'' ''Institutional boiler,'' ''Liquid fuel,'' ''Oil subcategory,'' ''Period of natural gas curtailment or supply interruption,'' ''Qualified Energy Assessor'' and ''Waste heat boiler.'' Adding definitions for ''30-day rolling average,'' ''Calendar year,'' ''Daily block average,'' ''Electric boiler,'' ''Electric utility steam generating unit (EGU),'' ''Minimum total secondary electric power,'' ''Oxygen analyzer system,'' ''Oxygen trim system,'' ''Process heater,'' ''Residential boiler,'' ''Seasonal boiler,'' ''Shutdown,'' ''Startup,'' and ''Temporary boiler.'' Deleting the definition for ''Minimum voltage or amperage.''
Table 1 to subpart JJJJJJ	Amending the mercury emission limit for coal fired boilers. Clarifying that the particulate matter emission limits do not include condensable particulate matter.
Table 2 to subpart JJJJJJ	Allowing seasonal boilers to conduct a tune-up every five years.
Table 6 to subpart JJJJJJ	• Correcting a printing error in Item 1.a related to wet scrubbers. • Clarifying the applicability of the operating limits for ESPs. • Adding operating load limit requirements for units subject to emission limits and performance stack tests.
Table 7 to subpart JJJJJJ	• Revising the 12-hour averages to 30-day rolling averages. • Adding operating load limit requirements for units subject to emission limits and performance stack tests.

A. Electric and Residential Boilers

We are proposing to amend 40 CFR 63.11195 (Are any boilers not subject to this subpart?) by adding electric boilers and residential boilers to the list of boilers not subject to subpart JJJJJJ. Electric boilers would be added because they do not have any combustion emissions, except when gaseous or liquid fuels are combusted as an emergency back-up during electric power outages. An electric boiler would be defined in 40 CFR 63.11237 as:

''* * * a boiler in which electric heating serves as the source of heat. Electric boilers that burn gaseous or liquid fuel during periods of electrical power curtailment or failure are included in this definition.''

Residential boilers are the boilers used in single and multi-family residences (e.g., duplexes, townhouses) where each dwelling typically has its own heating and hot water system, rather than a shared central system as in an apartment building or dormitory. Owners and operators of regulated sources have pointed out that residential boilers are small and are not included in the facility's operating permits because such units have historically been classified as insignificant sources under state and federal Clean Air Act operating permit programs. We agree that these residential boilers should be specifically excluded from the source category identified in subpart JJJJJJ because they are not part of either the industrial boiler source category or the commercial/institutional source category. The EPA did not intend to include these in the final rule for industrial, commercial, and institutional boilers.

A residential boiler would be defined in 40 CFR 63.11237 as:

''* * * a boiler used to provide heat and/or hot water used by the owner or occupant of a dwelling designed for and used for not more than four family units. This definition includes boilers used primarily to provide heat and/or hot water for a dwelling containing four or fewer families located at an institutional facility (e.g., university campus, military base, church grounds) or commercial/industrial facility (e.g., farm).''

B. Establishing Operating Limits for Wet Scrubbers

We are proposing to amend the operating limit provisions to clarify the operating limits for electrostatic precipitators. We are amending 40 CFR 63.11211(b)(2) to remove the second sentence stating that the operating limits for electrostatic precipitators (ESP) do not apply to dry ESP systems operated without a wet scrubber.

C. Timing of Subsequent Performance Tests

We are proposing to amend 40 CFR 63.11220 to correct a technical error. Paragraphs (b) through (d) of that section should have been removed from the final rule, and paragraph (a) should have been revised to remove the references to paragraphs (b) through (d),

when the testing frequency in paragraph (a) was changed between proposal and promulgation from annual testing to triennial testing for all sources. Paragraph (e) will be re-numbered to become paragraph (b).

D. Demonstrating Initial Compliance

We are proposing to amend 40 CFR 63.11210 to clarify the dates by which new and reconstructed boilers need to demonstrate initial compliance. We are proposing to amend 40 CFR 63.11210(d) to clarify that only boilers that are subject to emission limits for PM, mercury, or carbon monoxide in Table 1 to subpart JJJJJJ have a 180-day period after the applicable compliance date to demonstrate initial compliance. We are adding a new paragraph (e) to clarify that units that are only subject to work practice standards, emission reduction measures, and management practices in Table 2 to subpart JJJJJJ, and not subject to emission limits in Table 1, must demonstrate initial compliance no later than the applicable compliance date. The existing paragraph (e) would be re-designated paragraph (f).

We are adding a new paragraph (g) to clarify that units that switch fuels that result in the applicability of a different subcategory must demonstrate initial compliance with the applicable standards of the new subcategory no later than 180 days after the date upon which the fuel switch is commenced as identified in the notification submitted according to § 63.11225(g).

E. Demonstrating Compliance with the Work Practice and Management Practice Standards

We are proposing to amend 40 CFR 63.11223(b) to specify that you must conduct boiler tune-ups while burning the type of fuel that provided the majority of the heat input to the boiler over the 12 months prior to the tune-up. We are also proposing to amend 40 CFR 63.11223(b)(6)(iii) to specify that the type and amount of fuel needs to be included in the biennial report only if the unit was physically and legally capable of using more than one type of fuel during that period. We are also proposing to specify that for units sharing a fuel meter, you may estimate the fuel use by each unit. These changes are being proposed to accommodate units that burn more than one type of fuel.

We are also proposing to amend 40 CFR 63.11223 to include a new paragraph (c) to specify that, after an initial tune-up by the compliance date, seasonal boilers must complete a tune-up every 5 years, rather than a biennial tune-up.

We are renumbering paragraph (c) of 40 CFR 63.11223 to become paragraph (d) and amending that paragraph to include oil-fired and biomass-fired boilers in the requirement to minimize the time spent in startup and shutdown periods so that this requirement matches the requirement specified in Table 2 to subpart JJJJJJ.

F. Monitoring Requirements

We are proposing to amend 40 CFR 63.11224(c)(1) and (c)(2) to correct a cross reference error. The references to (b)(1)(i) should be to (c)(1)(i) in those two paragraphs.

G. Notification, Recordkeeping, and Reporting Requirements

We are proposing to amend 40 CFR 63.11225(b) to clarify the requirements for submitting a biennial report for units that are only subject to a biennial tune-up. We are also proposing to amend 40 CFR 63.11225(b)(2) to specify the information that must be included in the annual or biennial compliance report.

We are proposing to amend 40 CFR 63.11225(c)(2) to add additional record requirements. These would include a copy of the energy assessment and the days of operation for each boiler that meets the definition of a seasonal boiler. We are also proposing to amend 40 CFR 63.11225(c)(2) to specify that records of fuel use and type are required only for boilers that are subject to numerical emission limits in Table 1 to subpart JJJJJJ, instead of for all boilers.

We are also proposing to revise 40 CFR 63.11225(d) to remove the reference to 40 CFR 63.10(b)(1) and the requirement that the most recent 2 years of records be maintained ''on site.'' We are proposing to add language that would allow for computer access or other means of immediate access of records stored in a centralized location.

We are proposing to revise 40 CFR 63.11225(g) to add any physical change that may result in the applicability of a different subcategory to the notification requirement. We are proposing this revision to address the situation when a physical modification is made to limit/reduce the heat input capacity such that there is a change in applicability.

We are also proposing to amend 40 CFR 63.11214(c) to remove the requirement for submitting, upon request, the energy assessment. Petitioners commented that this approach, submit upon request, is contrary to the approach taken in the final Boiler MACT [40 CFR 63.7530(e)]. We agree that we had previously stated our intent to recognize in the final Boiler Area Source rule the sensitivity of confidential business information (CBI) contained in energy assessments. Considering this, the petitioners requested that the EPA reconsider the text of 63.11214(c) and clarify that energy assessment reports are not required to be submitted. We note that, even with this change, the Agency has the authority to obtain the energy assessment as authorized by CAA section 114, including the provisions for protecting CBI.

H. Definitions

We are proposing the following changes to the definitions in 40 CFR 63.11237:

Biomass subcategory: Proposing to revise the definition for ''Biomass subcategory'' to clarify that boilers burning any biomass are included in the definition unless they are included in the ''Coal subcategory'' definition. This change is being proposed to account for boilers burning less than 15 percent, on an annual heat input basis, in combination with gaseous fuels which would otherwise meet neither the definition of a biomass-fired boiler nor the definition of a gas-fired boiler.

Boiler: Proposing to revise the definition for ''Boiler'' to clarify that boilers may heat steam, hot water, or both, and to clarify that process heaters (for which a definition would be added) are excluded from the definition of boilers.

Electric utility steam generating unit (EGU): Proposing to amend the rule to define ''Electric utility steam generating unit (EGU)'' so that fossil fuel-fired EGUs are not inadvertently included in the boiler source category.

Energy assessment: Proposing to amend the definition of ''Energy assessment'' to correct a reference to Table 2 of subpart JJJJJJ, to remove the inclusion of process heaters, and to clarify that the energy assessment only needs to include an assessment of on-site energy usage. This latter change is made to account for the fact that some boilers provide steam and/or hot-water to off-site customers over whom they have no control.

We are also revising the definition of the energy assessment to change the time limit for the assessment from one or three days to eight or 24 technical labor hours, and to allow facilities to spend additional time on the assessment at their discretion. Facilities have indicated that it may be difficult to complete the energy assessments in the amount of time allowed in the final rule, and they should have the option to spend more time to complete the assessment. By switching from days to technical labor hours, we are also

recognizing that the assessment may require intermittent activity spread over several days, instead of uninterrupted activity for a one-day or three-day period.

Gas-fired boiler: Proposing to amend the definition of ''Gas-fired boiler'' to include startups as one of the conditions during which liquid fuel can be burned in units meeting this definition. We are also proposing to change from ''gas supply emergencies'' to ''gas supply interruptions'' because the term ''interruption'' more accurately and objectively describes the situations under which liquid fuels may be burned than ''emergency.''

Hot water heater: Proposing to amend the definition of ''Hot water heater'' to clarify that hot water boilers are included in the definition. Hot water boilers having a heat input capacity of less than 1.6 million Btu per hour meet the criteria listed for hot water heaters. We are also proposing to amend the definition to clarify/simplify applicability determinations.

Institutional boiler: Proposing to revise this definition to better encompass and describe the range of facilities that would be considered ''institutions'' by adding nursing homes, elementary and secondary schools, libraries, religious establishments, and governmental buildings to the examples in the definition. We are also adding language to clarify that ''institutions'' are not limited to just these examples.

Minimum voltage or amperage: Proposing to replace the term ''Minimum voltage or amperage'' with the term ''Minimum total secondary electric power,'' to better reflect the concept being described and the operating limit to which it applies. We are also proposing revising the definition of that term to clarify the meaning.

Oil subcategory: Proposing to change the terms in the definition from ''gas supply emergencies'' to ''gas supply interruptions,'' and adding ''startups'' as conditions under which liquid fuels can be burned in gas-fired units that are specifically excluded from meeting the definition of oil subcategory. We are also proposing to amend this definition to clarify that the 48-hour limit per calendar year applies only to periodic testing.

Period of natural gas curtailment or supply interruption: The rationale and description of the proposed amendments to this definition are described in Section IV.D of this preamble.

Process heater: Proposing to amend the rule to define ''Process heater'' so that process heaters are not inadvertently included in the boiler source category. This definition would also clarify that units that heat a water mixture as a heat transfer fluid, without generating steam, are not considered boilers. Although they are not specifically mentioned in the definition, the proposed definition would also be broad enough to include process heaters that utilize waste heat, as well as process heaters that rely directly on fuel combustion. A process heater would be defined as follows:

Process heater means an enclosed device using controlled flame, and the unit's primary purpose is to transfer heat indirectly to a process material (liquid, gas, or solid; raw, intermediate or finished) or to a heat transfer material (e.g., glycol or a mixture of glycol and water) for use in a process unit, instead of generating steam. Process heaters are devices in which the combustion gases do not come into direct contact with process materials. Process heaters include units that heat water/water mixtures for pool heating, sidewalk heating, cooling tower water heating, power washing, oil heating, or autoclaves.

Qualified energy assessor: Proposing to amend the definition to correct a paragraph numbering error in the definition.

Residential boiler and temporary boiler: Proposing to add definitions for ''Residential boiler'' and ''Temporary boiler'' because we are proposing to add these two types of boilers to the list of boilers that are exempt from subpart JJJJJJ. The rationale for adding temporary boilers and the definition are described in Section IV.B of this preamble, and the rationale for adding residential boilers and the definition are described in Section V.A of this preamble.

Seasonal boiler: Proposing to add a definition for ''Seasonal boiler'' because we are proposing to add a subcategory for those types of boilers. The rationale for adding this subcategory and the proposed definition is described in Section IV.A of this preamble.

Startup and *Shutdown:* While we are maintaining a work practice/management practice approach for startup and shutdown, we are proposing definitions of startup and shutdown. We are proposing to define ''startup'' as the period between the state of no combustion in the boiler to the period where the boiler first achieves 25 percent load (i.e., a cold start). We are proposing to define ''shutdown'' as the period that begins when a boiler last operates at 25 percent load and ending with a state of no fuel combustion in the boiler.

I. Change to the Mercury Emission Limit for New Coal-Fired Boilers

We are proposing to amend the mercury emission limit for new and existing coal-fired boilers in Table 1 to subpart JJJJJJ. At promulgation, the mercury limit for new and existing coal-fired boilers was 0.0000048 (4.8×10^{-6}) pounds (lb) mercury per MMBtu. This limit was based on the best performer of seven units for which data were available. All of the mercury data emissions from this boiler were below the method detection limit. After promulgation, however, the EPA determined that the boiler on which the EPA based this limit is a utility boiler and thus is not part of the source category and should not have been considered in setting the mercury emission limit for existing and new sources.

Examining the emissions data for the remaining six units, the top performing unit is now a unit from Massachusetts that achieved an emission level of 2.0×10^{-6} lb mercury per MMBtu. These emissions are above the method detection limit. Because this unit is from Massachusetts, the fuel variability factor (FVF) for eastern bituminous coal of 10.9 is still applicable. Using these data and the FVF of 10.9, the proposed mercury emission limit for new and existing coal-fired boilers is 0.000022 lb mercury per MMBtu.

J. Changes to the Work Practice Standards, Emission Reduction Measures, and Management Practices

We are proposing to amend Table 2 to subpart JJJJJJ to add a provision that allows seasonal boilers, after an initial tune up by the compliance date, to conduct a tune-up every 5 years instead of a biennial tune-up. As explained in section IV.A of this preamble, we are proposing to create a new subcategory for seasonally operated boilers. Because these boilers are operated seasonally, it can be difficult to schedule and complete the testing needed to complete the tune-up requirements every other year (biennially) for periods when the boilers are operating, especially at facilities that have multiple boilers. Therefore, we are proposing to allow seasonally operated boilers to conduct tune-ups every five years after the initial tune up by the compliance date, and include this requirement in Table 2 to subpart JJJJJJ.

K. Requirements for Establishing Operating Limits

We are proposing several changes to Table 6 to subpart JJJJJJ:

We are proposing to revise the requirements for establishing the

operating limits for wet scrubbers in Item 1.a of Table 6 to correct a printing error related to how the recorded data are reduced to determine the operating limits. Operators are currently instructed to collect pressure drop and liquid flow-rate data every 15 minutes during the entire period of the performance stack tests. The instruction to determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance stack test was placed in the incorrect column of Table 6. It will be moved from the second column (''And your operating limits are based on * * *'') to the fifth column (''According to the following requirements'').

We are proposing to revise the requirements for establishing the operating limits for ESPs in Item 1.b of Table 6 to clarify that they apply to all ESPs, and do not apply to only those that are operated on units with wet scrubbers.

We are proposing to revise Table 6 to include as Item 4 provisions for establishing a unit-specific limit for maximum operating load. These provisions would apply to any unit subject to a pollutant emissions limit for which compliance is demonstrated by a performance (stack) test. Operating load data would include fuel feed rate data or steam generation rate data and would be collected at 15 minute intervals during each run of the performance test. The average rate would be determined for each run of the performance test and the average of the three test runs would be determined. The maximum operating limit would be 110 percent of the average of the three test runs.

L. Demonstrating Continuous Compliance

We are proposing several amendments to Table 7 to subpart JJJJJJ:

We are proposing to amend the continuous compliance requirements for the following operating limits to clarify that compliance is based on a 30-day rolling average:

- Wet scrubber pressure drop and liquid flow rate in Item 3.c.
- Dry scrubber sorbent or carbon injection rate in Item 4.c.
- ESP secondary amperage and voltage, or total power input in Item 5.c.
- Oxygen content in the combustion exhaust in Item 7.b.

We are proposing to amend the provisions for oxygen monitoring to reflect the amendments to add oxygen trim analyzer systems that were discussed in more detail in section IV.E of this preamble.

We are also proposing to add new requirements as Item 8 for establishing a unit-specific operating limit for unit operating load based on fuel feed rate or steam generation rate. This change coincides with the proposed amendment to Table 6 to subpart JJJJJJ to establish a unit-specific operating limit for maximum operating load for any pollutant for which compliance is demonstrated by a performance (stack) test.

VI. What are the impacts associated with the amendments?

The proposed amendments contained in this action are corrections that are intended to clarify, but not change, the coverage of the final rule. The clarifications and corrections should make it easier for owners and operators and for local and State authorities to understand and implement the requirements. The amendments will not increase the costs for the final rule but will result in a decrease in the burden on small facilities as a result of the reduction in the frequency of conducting tune-ups for seasonal boilers and small (equal to or less than 5 MMBtu/hr) oil-fired boilers.

As discussed in section V, the mercury emission limits for new and existing large (10 MMBtu/hr or greater) coal-fired area source boilers was revised because of an error discovered in the analysis conducted for the final rule. This technical correction resulted in an increase in the emission limits for mercury. Concurrently, we revised our impacts analysis to be consistent with changes made to the major source boiler rule. The baseline emissions for area sources are calculated using the emission factors developed for the major source rule because of insufficient data for area sources. Since promulgation, the EPA has received and incorporated a significant amount of additional data and has corrected previous calculation errors that impacted the emission factors used to calculate baseline emissions resulting in a higher baseline emission for mercury from coal-fired area source boilers. Consequently, the result of the increase in both baseline mercury emissions and mercury emission limits in this proposed rule is that the overall reduction in mercury emissions does not change significantly from the estimated reduction for the promulgated rule.

In summary, as compared to the control costs estimated in the March 2011 final rule, the proposed amendments will result in a decrease in the capital and annual cost due to the increase in emission limits and the decrease in burden on small facilities.

VII. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and Executive Order 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This proposed rule does not impose any new information collection burden. However, OMB has previously approved the information collection requirements contained in the existing regulation (40 CFR part 63, subpart JJJJJJ) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* and has assigned OMB control number 2060–0688, EPA information collection request (ICR) number 2253.02, to the ICR.

This action results in no changes to the information collection requirements of the final rule and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB. Therefore, the ICR has not been revised. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[3] The RFA also

[3] Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration size standards for small businesses at 13 CFR 121.201 (less than 500, 750, or 1,000 employees, depending on the specific NAICS Code under subcategory 325); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

allows an agency to ''consider a series of closely related rules as one rule for the purposes of sections'' 603 (initial regulatory flexibility analysis) and 604 (final regulatory flexibility analysis) in order to avoid ''duplicative action.'' 5 U.S.C. 605(c). This proposed rule is closely related to the boiler area source rule, which EPA signed on February 21, 2011 and that took effect on May 20, 2011. The EPA prepared an initial regulatory flexibility analysis in connection with the boiler area source rule. Therefore, pursuant to § 605(c), the EPA is not required to complete an initial regulatory flexibility analysis for this rule.

The EPA has been concerned with potential small entity impacts since it began developing the boiler area source rule. The EPA conducted outreach to small entities and, pursuant to § 609 of RFA, convened a Small Business Advocacy Review Panel (the Panel) on January 22, 2009, to obtain advice and recommendations from small entity representatives. Pursuant to the RFA, the EPA used the Panel's report and prepared both an initial regulatory flexibility analysis and a final regulatory flexibility analysis in connection with the closely related boiler area source rule. Convening an additional Panel and preparing an additional initial regulatory flexibility analysis would be procedurally duplicative and is unnecessary given that the issues here are within the scope of those considered by the Panel. Finally, we note that this rule, which proposes to amend the boiler area source rule, will not impose any additional regulatory requirements beyond those imposed by the previously promulgated boiler area source rule.

D. Unfunded Mandates Reform Act

This action contains no new Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This proposed rule imposes no new enforceable duty on any State, local, or tribal governments or the private sector. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no new regulatory requirements that might significantly or uniquely affect small governments. This rule proposes amendments to aid with compliance, but does not change the level of the standards in the rule.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule will not impose new direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial new direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this action does not change the level of standards already in place.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not use available and applicable VCS.

This proposed rulemaking does not involve any new technical standards. Therefore, the EPA did not consider the use of any VCS.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would not change the level of environmental protection for any affected populations. Therefore, it does not have any disproportionately high or adverse human health or environmental effects on any population, including any minority or low-income population. The amendments would not relax the control measures on sources regulated by the rules, and, therefore, will not cause emissions increases from these sources.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances.

Dated: December 2, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart JJJJJJ—[AMENDED]

2. Section 63.11195 is amended by revising the introductory text and paragraph (c) and by adding paragraphs (h), (i), (j), and (k) to read as follows:

§ 63.11195 Are any boilers not subject to this subpart?

The types of boilers listed in paragraphs (a) through (k) of this section are not subject to this subpart and to any requirements in this subpart.

* * * * *

(c) A boiler required to have a permit under section 3005 of the Solid Waste Disposal Act or covered by subpart EEE of this part (e.g., hazardous waste boilers), unless such units do not combust hazardous waste and combust comparable fuels.

* * * * *

(h) Temporary boilers as defined in this subpart.

(i) Residential boilers as defined in this subpart.

(j) Electric boilers as defined in this subpart.

(k) An electric utility steam generating unit as defined in this subpart.

3. Section 63.11196 is amended by revising paragraph (a)(1) to read as follows:

§ 63.11196 What are my compliance dates?

(a) * * *

(1) If the existing affected boiler is subject to a work practice or management practice standard of a tuneup, you must achieve compliance with the work practice or management standard no later than March 21, 2013.

* * * * *

4. Section 63.11210 is amended by revising paragraph (d), by redesignating paragraph (e) as paragraph (f) and adding a new paragraphs (e) and (g) to read as follows:

§ 63.11210 What are my initial compliance requirements and by what date must I conduct them?

* * * * *

(d) For new or reconstructed affected boilers that have applicable emission limits, you must demonstrate initial compliance no later than 180 calendar days after March 21, 2011 or within 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(e) For new or reconstructed affected boilers that have only applicable work practice standards or management practices, you must demonstrate initial compliance no later than the compliance date that is specified in § 63.11196 and according to the applicable provisions in § 63.7(a)(2). You are not required to complete an initial performance tune-up for a new or reconstructed affected source, but you are required to complete the applicable biennial or five-year tune-up as specified in § 63.11223(b), (c), and (d) no later than 25 months or 61 months, respectively, after the initial startup of the new or reconstructed affected source.

* * * * *

(g) For affected boilers that switch fuels or make a physical modification to the boiler that result in the applicability of a different subcategory, you must demonstrate compliance within 180 days of the effective date of the fuel switch or physical modification consistent with § 63.11225(g).

5. Section 63.11211 is amended by revising paragraph (b)(2) to read as follows:

§ 63.11211 How do I demonstrate initial compliance with the emission limits?

* * * * *

(b) * * *

(2) For an electrostatic precipitator operated with a wet scrubber, you must establish the minimum secondary voltage and secondary amperage (or total secondary electric power input), as defined in § 63.11237, as your operating limits during the three-run performance stack test.

* * * * *

6. Section 63.11212 is amended by revising paragraph (b) to read as follows:

§ 63.11212 What stack tests and procedures must I use for the performance tests?

* * * * *

(b) You must conduct each stack test according to the requirements in Table 4 to this subpart. Boilers that use a continuous emission monitoring system for carbon monoxide are exempt from the initial carbon monoxide performance testing in Table 4 to this subpart and the oxygen concentration operating limit requirement specified in Table 3 to this subpart.

* * * * *

7. Section 63.11214 is amended by revising paragraph (c) to read as follows:

§ 63.11214 How do I demonstrate initial compliance with the work practice standard, emission reduction measures, and management practice?

* * * * *

(c) If you own or operate an existing affected boiler with a heat input capacity of 10 million Btu per hour or greater, you must submit a signed certification in the Notification of Compliance Status report that an energy assessment of the boiler and its energy use systems was completed according to Table 2 to this subpart and is an accurate depiction of your facility.

* * * * *

8. Section 63.11220 is amended by revising paragraphs (a) and (b) and removing paragraphs (c), (d), and (f).

The revisions read as follows:

§ 63.11220 When must I conduct subsequent performance tests?

(a) If your boiler has a heat input capacity of 10 million Btu per hour or greater, you must conduct all applicable performance (stack) tests according to § 63.11212 on a triennial basis. Triennial performance tests must be completed no more than 37 months after the previous performance test.

(b) If you demonstrate compliance with the mercury emission limit based on fuel analysis, you must conduct a fuel analysis according to § 63.11213 for each type of fuel burned monthly. If you plan to burn a new type of fuel or fuel mixture, you must conduct a fuel analysis before burning the new type of fuel or mixture in your boiler. You must recalculate the mercury emission rate using Equation 1 of § 63.11211. The recalculated mercury emission rate must be less than the applicable emission limit.

9. Section 63.11221 is amended by revising the section heading, and paragraphs (a), (b), and (d) to read as follows:

§ 63.11221 Is there a minimum amount of monitoring data I must obtain?

(a) You must monitor and collect data according to this section and the site-specific monitoring plan required by § 63.11205(c).

(b) You must operate the monitoring system and collect data at all required intervals at all times the affected source is operating and compliance is required, except for periods of monitoring system malfunctions or out-of-control periods (see § 63.8(c)(7) of this part), repairs associated with monitoring system malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities

including, as applicable, calibration checks and required zero and span adjustments. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to effect monitoring system repairs in response to monitoring system malfunctions or out-of-control periods and to return the monitoring system to operation as expeditiously as practicable.

* * * * *

(d) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments, failure to collect required data is a deviation of the monitoring requirements.

10. Section 63.11223 is amended by revising paragraphs (a), (b) introductory text, (b)(5), (b)(6) introductory text, (b)(6)(iii), and (c), and adding paragraphs (d) and (e) to read as follows:

§ 63.11223 How do I demonstrate continuous compliance with the work practice and management practice standards?

(a) For affected sources subject to the work practice standard or the management practices of a tune-up, you must conduct a performance tune-up according to paragraph (b) of this section and keep records as required in § 63.11225(c) to demonstrate continuous compliance.

(b) Except as specified in paragraphs (c) and (d) of this section, you must conduct a tune-up of the boiler biennially to demonstrate continuous compliance as specified in paragraphs (b)(1) through (7) of this section. Each biennial tune-up must be conducted no more than 25 months after the previous tune-up. For a new or reconstructed boiler, the first biennial tune-up must be no later than 25 months after the initial startup of the new or reconstructed boiler.

* * * * *

(5) Measure the concentrations in the effluent stream of carbon monoxide in parts per million, by volume, and oxygen in volume percent, before and after the adjustments are made (measurements may be either on a dry or wet basis, as long as it is the same basis before and after the adjustments are made). You must conduct the tune-up while burning the type of fuel that provided the majority of the heat input to the boiler over the 12 months prior to the tune-up.

(6) Maintain onsite and submit, if requested by the Administrator, a report containing the information in paragraphs (b)(6)(i) through (iii) of this section.

* * * * *

(iii) The type and amount of fuel used over the 12 months prior to the tune-up of the boiler, but only if the unit was physically and legally capable of using more than one type of fuel during that period. Units sharing a fuel meter may estimate the fuel use by each unit.

* * * * *

(c) Seasonal boilers must complete a tune-up every five years as specified in paragraphs (b)(1) through (7) of this section. Each five-year tune-up must be conducted no more than 61 months after the previous tune-up. For a new or reconstructed seasonal boiler, the first five-year tune-up must be no later than 61 months after the initial startup.

(d) Oil-fired boilers with a heat input capacity of equal to or less than 5 million Btu per hour must complete a tune-up every five years as specified in paragraphs (b)(1) through (7) of this section. Each five-year tune-up must be conducted no more than 61 months after the previous tune-up. For a new or reconstructed oil-fired boiler with a heat input capacity of equal to or less than 5 million Btu per hour, the first five-year tune-up must be no later than 61 months after the initial startup. You may delay the burner inspection specified in paragraph (b)(1) of this section until the next scheduled unit shutdown, but you must inspect each burner at least once every 72 months.

(e) If you own or operate an existing or new coal-fired boiler, a new biomass-fired boiler, or a new oil-fired boiler with a heat input capacity of 10 million Btu per hour or greater, you must minimize the boiler's time spent during startup and shutdown following the manufacturer's recommended procedures and you must submit a signed statement in the Notification of Compliance Status report that indicates that you conducted startups and shutdowns according to the manufacturer's recommended procedures.

11. Section 63.11224 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), (a)(5), (a)(6), (c)(1) introductory text, and (c)(2) introductory text, and adding paragraph (a)(7) to read as follows:

§ 63.11224 What are my monitoring, installation, operation, and maintenance requirements?

(a) If your boiler is subject to a carbon monoxide emission limit in Table 1 to this subpart, you must either install, operate, and maintain a CEMS for CO and oxygen according to the procedures in paragraphs (a)(1) through (6) of this section, or install, operate, and maintain a continuous oxygen analyzer system as defined in § 63.11237 according to paragraphs (a)(7) and (d) of this section by the compliance date specified in § 63.11196. The CEMS for CO and oxygen shall be monitored at the same location at the outlet of the boiler. Boilers that use a CEMS for CO are exempt from the initial CO performance testing and oxygen concentration operating limit requirements specified in § 63.11211(a) of this subpart.

(1) Each CO CEMS must be installed, operated, and maintained according to the applicable procedures under Performance Specification 4, 4A, or 4B at 40 CFR part 60, appendix B, and each oxygen CEMS must be installed, operated, and maintained according to Performance Specification 3 at 40 CFR part 60, appendix B. Both the CO and oxygen CEMS must also be installed, operated, and maintained according to the site-specific monitoring plan developed according to paragraph (c) of this section.

(2) You must conduct a performance evaluation of each CEMS according to the requirements in § 63.8(e) and according to Performance Specifications 3 and 4, 4A, or 4B at 40 CFR part 60, appendix B.

* * * * *

(5) You must calculate one-hour arithmetic averages, corrected to 3 percent oxygen from each hour of CO CEMS data in parts per million CO concentrations. The one-hour arithmetic averages required shall be used to calculate the boiler operating day daily arithmetic average emissions. Calculate a 10-day rolling average from the daily averages. Use Equation 19–19 in section 12.4.1 of Method 19 of 40 CFR part 60, appendix A–7 for calculating the average carbon monoxide concentration from the hourly values.

(6) For purposes of calculating data averages, you must use all the data collected during all periods in assessing compliance, excluding data collected during periods when the monitoring system malfunctions or is out of control, during associated repairs, and during required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments). Monitoring failures that are caused in part by poor

maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out of control and data are not available for a required calculation constitutes a deviation from the monitoring requirements. Periods when data are unavailable because of required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments) do not constitute monitoring deviations.

(7) You must operate the oxygen analyzer system with the oxygen level set at the minimum percent oxygen by volume that is established as the operating limit for oxygen according to Table 4 to this subpart.

(c) * * *

(1) For each continuous monitoring system (CMS) required in this section, you must develop, and submit to the EPA Administrator for approval upon request, a site-specific monitoring plan that addresses paragraphs (c)(1)(i) through (iii) of this section. You must submit this site-specific monitoring plan (if requested) at least 60 days before your initial performance evaluation of your CMS.

* * * * *

(2) In your site-specific monitoring plan, you must also address paragraphs (c)(2)(i) through (iii) of this section.

* * * * *

12. Section 63.11225 is amended by revising paragraphs (b) introductory text, (b)(2), (c)(2) introductory text, (c)(2)(ii), (d), and (g) and by adding (c)(2)(iii) through (v) to read as follows:

§ 63.11225 What are my notification, reporting, and recordkeeping, requirements

* * * * *

(b) You must prepare, by March 1 of each year, and submit to the delegated authority upon request, an annual compliance certification report for the previous calendar year containing the information specified in paragraphs (b)(1) through (4) of this section. You must submit the report by March 15 if you had any instance described by paragraph (b)(3) of this section. For boilers that are subject only to a requirement to conduct a biennial or five-year tune-up according to § 63.11223(a) and not subject to emission limits or operating limits, you may prepare only a biennial or five-year compliance report as specified in paragraphs (b)(1) and (2) of this section.

* * * * *

(2) Statement by a responsible official, with the official's name, title, phone number, email address, and signature, certifying the truth, accuracy and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart. Your notification must include the following certification(s) of compliance, as applicable, and signed by a responsible official:

(i) ''This facility complies with the requirements in § 63.11223 to conduct a biennial or five-year tune-up, as applicable, of each boiler.''

(ii) For units that do not qualify for a statutory exemption as provided in section 129(g)(1) of the Clean Air Act: ''No secondary materials that are solid waste were combusted in any affected unit.''

(iii) ''This facility complies with the requirement in § 63.11223(c) to minimize the boiler's time spent during startup and shutdown following the manufacturer's recommended procedures.''

* * * * *

(c) * * *

(2) You must keep records to document conformance with the work practices, emission reduction measures, and management practices required by § 63.11214 as specified in paragraphs (c)(2)(i) through (v) of this section.

* * * * *

(ii) Records documenting the fuel type(s) used monthly by each boiler, including whether the fuel has received a non-waste determination by you or the EPA. If you combust non-hazardous secondary materials that have been determined not to be solid waste pursuant to § 241.3(b)(1), you must keep a record which documents how the secondary material meets each of the legitimacy criteria. If you combust a fuel that has been processed from a discarded non-hazardous secondary material pursuant to § 241.3(b)(4), you must keep records as to how the operations that produced the fuel satisfies the definition of processing in § 241.2. If the fuel received a non-waste determination pursuant to the petition process submitted under § 241.3(c), you must keep a record that documents how the fuel satisfies the requirements of the petition process.

(iii) For each boiler required to conduct an energy assessment, you must keep a copy of the energy assessment report.

(iv) For each boiler subject to an emission limit in Table 1 to this subpart, you must also keep records of monthly fuel use by each boiler, including the type(s) of fuel and amount(s) used.

(v) You must keep records of days of operation by each boiler that meets the definition of seasonal boiler.

* * * * *

(d) Your records must be in a form suitable and readily available for expeditious review. You must keep each record for 5 years following the date of each recorded action. You must keep each record onsite or be accessible from a central location by computer or other means that instantly provide access at the site for at least 2 years after the date of each recorded action. You may keep the records off site for the remaining 3 years.

* * * * *

(g) If you intend to switch fuels or make a physical change to the boiler, and this fuel switch or change may result in the applicability of a different subcategory or a switch out of subpart JJJJJJ due to a switch to 100 percent natural gas, you must provide 30 days prior notice of the date upon which you will switch fuels. The notification must identify:

(1) The name of the owner or operator of the affected source, the location of the source, the boiler(s) that will switch fuels or be physically modified, and the date of the notice.

(2) The currently applicable subcategory under this subpart.

(3) The date on which you became subject to the currently applicable standards.

(4) The date upon which you will commence the fuel switch or modification.

13. Section 63.11237 is amended as follows:

a. By adding new definitions in alphabetical order for ''30-day rolling average,'' ''Calendar year,'' ''Daily block average,'' ''Electric boiler,'' ''Electric utility steam generating unit (EGU),'' ''Minimum total secondary electric power,'' ''Oxygen analyzer system,'' ''Oxygen trim system,'' ''Process heater,'' ''Residential boiler,'' ''Seasonal boiler,'' ''Shutdown,'' ''Startup,'' and ''Temporary boiler.''

b. By revising the definitions for ''Annual heat input basis,'' ''Biomass subcategory,'' ''Boiler,'' ''Energy assessment,'' ''Gas-fired boiler,'' ''Hot water heater,'' ''Institutional boiler,'' ''Oil subcategory,'' ''Period of natural gas curtailment or supply interruption,'' ''Qualified Energy Assessor,'' and ''Waste heat boiler.''

c. By removing the definition for ''Minimum voltage or amperage.''

The additions and revisions read as follows:

§ 63.11237 What definitions apply to this subpart?

* * * * *

30-day rolling average means the arithmetic mean of all valid data from 30 successive operating days that is

calculated for each operating day using the data from that operating day and the previous 29 operating days.

* * * * *

Annual heat input basis means the heat input for the calendar year preceding the compliance demonstration.

* * * * *

Biomass subcategory includes any boiler that burns any biomass and is not in the coal subcategory.

Boiler means an enclosed device using controlled flame combustion in which water is heated to recover thermal energy in the form of steam and/or hot water. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel and/or oxidizer feed rates are controlled. A device combusting solid waste, as defined in § 241.3, is not a boiler unless the device is exempt from the definition of a solid waste incineration unit as provided in section 129(g)(1) of the Clean Air Act. Waste heat boilers and process heaters are excluded from this definition.

* * * * *

Calendar year means the period between January 1 and December 31, inclusive, for a given year.

* * * * *

Daily block average means the arithmetic mean of all valid emission concentrations or parameter levels recorded when a unit is operating measured over the 24-hour period from 12 a.m. (midnight) to 12 a.m. (midnight).

* * * * *

Electric boiler means a boiler in which electric heating serves as the source of heat. Electric boilers that burn gaseous or liquid fuel during periods of electrical power curtailment or failure are included in this definition.

Electric utility steam generating unit (EGU) means a fossil fuel-fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A fossil fuel-fired unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale is considered an electric utility steam generating unit. To be ''capable of combusting'' fossil fuels, an EGU would need to have these fuels allowed in their operating permits and have the appropriate fuel handling facilities on-site or otherwise available (e.g., coal handling equipment, including coal storage area, belts and conveyers, pulverizers, etc.; oil storage facilities). In addition, fossil fuel-fired EGU means any EGU that fired fossil fuel for more than 10.0 percent of the average annual heat input in any 3 consecutive calendar years or for more than 15.0 percent of the annual heat input during any one calendar year after (COMPLIANCE DATE OF THE FINAL EGU RULE].

* * * * *

Energy assessment means the following only as this term is used in Table 2 to this subpart:

(1) Energy assessment for facilities with affected boilers using less than 0.3 trillion Btu (TBtu) per year heat input will be 8 technical labor hours in length maximum, but may be longer at the discretion of the owner or operator of the affected source. The boiler system and on-site energy use system accounting for at least 50 percent of the affected boiler(s) energy output will be evaluated to identify energy savings opportunities, within the limit of performing an 8-hour energy assessment.

(2) Energy assessment for facilities with affected boilers using 0.3 to 1 TBtu/year will be 24 technical labor hours in length maximum, but may be longer at the discretion of the owner or operator of the affected source. The boiler system(s) and any on-site energy use system(s) accounting for at least 33 percent of the affected boiler(s) energy output will be evaluated to identify energy savings opportunities, within the limit of performing a 24-hour energy assessment.

(3) Energy assessment for facilities with affected boilers using greater than 1.0 TBtu/year, the boiler system(s) and any on-site energy use system(s) accounting for at least 20 percent of the affected boiler(s) energy output will be evaluated to identify energy savings opportunities.

* * * * *

Gas-fired boiler includes any boiler that burns gaseous fuels not combined with any solid fuels, burns liquid fuel only during periods of gas curtailment, gas supply interruption, startups, or periodic testing on liquid fuel. Periodic testing of liquid fuel shall not exceed a combined total of 48 hours during any calendar year.

* * * * *

Hot water heater means a closed vessel with a capacity of no more than 120 U.S. gallons in which water is heated by combustion of gaseous or liquid fuel and hot water is withdrawn for use external to the vessel. Hot water boilers (i.e., not generating steam) combusting gaseous or liquid fuel with a heat input capacity of less than 1.6 million Btu per hour are included in this definition.

* * * * *

Institutional boiler means a boiler used in institutional establishments such as, but not limited to, medical centers, nursing homes, research centers, institutions of higher education, elementary and secondary schools, libraries, religious establishments, and governmental buildings to provide electricity, steam, and/or hot water.

* * * * *

Liquid fuel includes, but is not limited to, distillate oil, residual oil, any form of liquid fuel derived from petroleum, on-spec used oil, liquid biofuels, biodiesel, and vegetable oil.

* * * * *

Minimum total secondary electric power means the lowest hourly average total secondary electric power determined from the values of secondary voltage and secondary current to the electrostatic precipitator measured according to Table 6 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limits.

* * * * *

Oil subcategory includes any boiler that burns any liquid fuel and is not in either the biomass or coal subcategories. Gas-fired boilers that burn liquid fuel only during periods of gas curtailment, gas supply interruptions, startups, or for periodic testing are not included in this definition. Periodic testing on liquid fuel shall not exceed a combined total of 48 hours during any calendar year..

* * * * *

Oxygen analyzer system means all equipment required to determine the oxygen content of a gas stream and used to monitor oxygen in the boiler flue gas or firebox. This definition includes oxygen trim systems. The source owner or operator is responsible to install, calibrate, maintain, and operate the oxygen analyzer system in accordance with the manufacturer's recommendations.

Oxygen trim system means a system of monitors that is used to maintain excess air at the desired level in a combustion device. A typical system consists of a flue gas oxygen and/or carbon monoxide monitor that automatically provide a feedback signal to the combustion air controller.

Period of gas curtailment or supply interruption means a period of time during which the supply of gaseous fuel to an affected facility is halted for reasons beyond the control of the facility. The act of entering into a contractual agreement with a supplier of

natural gas established for curtailment purposes does not constitute a reason that is under the control of a facility for the purposes of this definition. An increase in the cost or unit price of natural gas due to normal market fluctuations not during periods of supplier delivery restriction does not constitute a period of natural gas curtailment or supply interruption. On-site gaseous fuel system emergencies or equipment failures may qualify as periods of supply interruption when the emergency or failure is beyond the control of the facility.

Process heater means an enclosed device using controlled flame, and the unit's primary purpose is to transfer heat indirectly to a process material (liquid, gas, or solid; raw, intermediate or finished) or to a heat transfer material (e.g., glycol or a mixture of glycol and water) for use in a process unit, instead of generating steam. Process heaters are devices in which the combustion gases do not come into direct contact with process materials. Process heaters include units that heat water/water mixtures for pool heating, sidewalk heating, cooling tower water heating, power washing, or oil heating.

Qualified Energy Assessor means:

(1) Someone who has demonstrated capabilities to evaluate energy savings opportunities for steam generation and major energy using systems, including, but not limited to:

(i) Boiler combustion management.

(ii) Boiler thermal energy recovery, including

(A) Conventional feed water economizer.

(B)Conventional combustion air preheater, and

(C)Condensing economizer.

(iii) Boiler blowdown thermal energy recovery.

(iv) Primary energy resource selection, including

(A) Fuel (primary energy source) switching, and

(B) Applied steam energy versus direct-fired energy versus electricity.

(v) Insulation issues.

(vi) Steam trap and steam leak management.

(vii) Condensate recovery.

(viii) Steam end-use management.

(2) Capabilities and knowledge includes, but is not limited to:

(i) Background, experience, and recognized abilities to perform the assessment activities, data analysis, and report preparation.

(ii) Familiarity with operating and maintenance practices for steam or process heating systems.

(iii) Additional potential steam system improvement opportunities including improving steam turbine operations and reducing steam demand.

(iv) Additional process heating system opportunities including effective utilization of waste heat and use of proper process heating methods.

(v) Boiler-steam turbine cogeneration systems.

(vi) Industry specific steam end-use systems.

Residential boiler means a boiler used in a dwelling containing four or fewer family units to provide heat and/or hot water. This definition includes boilers used primarily to provide heat and/or hot water for a dwelling containing four or fewer families located at an institutional facility (e.g., university campus, military base, church grounds) or commercial/industrial facility (e.g., farm).

* * * * *

Seasonal boiler means a boiler that undergoes a shutdown for a period of at least 7 consecutive months (or 210 consecutive days) due to seasonal market conditions.

Shutdown means the period that begins when the boiler last operates at 25 percent load and ending with a state of no fuel combustion in the boiler.

* * * * *

Startup means the period between the state of no combustion in the boiler to the period where the boiler first achieves 25 percent load (i.e., a cold start).

Temporary boiler means any gaseous or liquid fuel boiler that is designed to, and is capable of, being carried or moved from one location to another by means of, for example, wheels, skids, carrying handles, dollies, trailers, or platforms. A boiler is not a temporary boiler if any one of the following conditions exists:

(1) The equipment is attached to a foundation.

(2) The boiler or a replacement remains at a location for more than 12 consecutive months. Any temporary boiler that replaces a temporary boiler at a location and performs the same or similar function will be included in calculating the consecutive time period.

(3) The equipment is located at a seasonal facility and operates during the full annual operating period of the seasonal facility, remains at the facility for at least 2 years, and operates at that facility for at least 3 months each year.

(4) The equipment is moved from one location to another in an attempt to circumvent the residence time requirements of this definition.

* * * * *

Waste heat boiler means a device that recovers normally unused energy and converts it to usable heat. Waste heat boilers are also referred to as heat recovery steam generators. This definition includes both fired and unfired waste heat boilers.

* * * * *

14. Tables 1, 2, 3, 6, and 7 to subpart JJJJJJ are revised to read as follows:

As stated in § 63.11201, you must comply with the following applicable emission limits:

TABLE 1 TO SUBPART JJJJJJ OF PART 63—EMISSION LIMITS

If your boiler is in this subcategory * * *	For the following pollutants * * *	You must achieve less than or equal to the following emission limits, except during periods of startup and shutdown * * *
1. New coal-fired boiler with heat input capacity of 30 million Btu per hour or greater.	a. Particulate Matter (Filterable).	0.03 lb per MMBtu of heat input.
	b. Mercury	0.000022 lb per MMBtu of heat input.
	c. Carbon Monoxide.	420 ppm by volume on a dry basis corrected to 3 percent oxygen (3-run average or 10-day rolling average).
2. New coal-fired boiler with heat input capacity of between 10 and 30 million Btu per hour.	a. Particulate Matter (Filterable).	0.42 lb per MMBtu of heat input.
	b. Mercury	0.000022 lb per MMBtu of heat input.
	c. Carbon Monoxide.	420 ppm by volume on a dry basis corrected to 3 percent oxygen (3-run average or 10-day rolling average).

TABLE 1 TO SUBPART JJJJJJ OF PART 63—EMISSION LIMITS—Continued

If your boiler is in this subcategory * * *	For the following pollutants * * *	You must achieve less than or equal to the following emission limits, except during periods of startup and shutdown * * *
3. New biomass-fired boiler with heat input capacity of 30 million Btu per hour or greater.	a. Particulate Matter (Filterable).	0.03 lb per MMBtu of heat input.
4. New biomass fired boiler with heat input capacity of between 10 and 30 million Btu per hour.	a. Particulate Matter (Filterable).	0.07 lb per MMBtu of heat input.
5. New oil-fired boiler with heat input capacity of 10 million Btu per hour or greater.	a. Particulate Matter (Filterable).	0.03 lb per MMBtu of heat input.
6. Existing coal (units with heat input capacity of 10 million Btu per hour or greater).	a. Mercury	0.000022 lb per MMBtu of heat input.
	b. Carbon Monoxide.	420 ppm by volume on a dry basis corrected to 3 percent oxygen.

As stated in § 63.11201, you must comply with the following applicable work practice standards, emission reduction measures, and management practices:

TABLE 2 TO SUBPART JJJJJJ OF PART 63—WORK PRACTICE STANDARDS, EMISSION REDUCTION MEASURES, AND MANAGEMENT PRACTICES

If your boiler is in this subcategory * * *	You must meet the following * * *
1. Existing or new coal, new biomass, and new oil (units with heat input capacity of 10 million Btu per hour or greater).	Minimize the boiler's startup and shutdown periods following the manufacturer's recommended procedures. If manufacturer's recommended procedures are not available, you must follow recommended procedures for a unit of similar design for which manufacturer's recommended procedures are available.
2. Existing coal (units with heat input capacity of less than 10 million Btu per hour).	Conduct an initial tune-up as specified in § 63.11214, and conduct a tune-up of the boiler biennially as specified in § 63.11223.
3. New coal (units with heat input capacity of less than 10 million Btu per hour).	Conduct a tune-up of the boiler biennially as specified in § 63.11223.
4. Existing oil-fired boilers with heat input capacity greater than 5 million Btu per hour, and all existing biomass-fired boilers.	Conduct an initial tune-up as specified in § 63.11214, and conduct a tune-up of the boiler biennially as specified in § 63.11223.
5. New oil-fired boilers with heat input capacity greater than 5 million Btu per hour, and all new biomass-fired boilers.	Conduct a tune-up of the boiler biennially as specified in § 63.11223.
6. Existing seasonal boilers	Conduct an initial tune-up as specified in § 63.11214, and conduct a tune-up of the boiler every five years as specified in § 63.11223.
7. New seasonal boilers	Conduct a tune-up of the boiler every five years as specified in § 63.11223.
8. Existing oil-fired boiler with heat input capacity of equal to or less than 5 million Btu per hour.	Conduct an initial tune-up as specified in § 63.11214, and conduct a tune-up of the boiler every five years as specified in § 63.11223.
9. New oil-fired boiler with heat input capacity of equal to or less than 5 million Btu per hour.	Conduct a tune-up of the boiler every five years as specified in § 63.11223.
10. Existing coal, biomass, or oil (units with heat input capacity of 10 million Btu per hour and greater).	Must have a one-time energy assessment performed by a qualified energy assessor. An energy assessment completed on or after January 1, 2008, that meets or is amended to meet the energy assessment requirements in this table satisfies the energy assessment requirement. The energy assessment must include: (1) A visual inspection of the boiler system. (2) An evaluation of operating characteristics of the facility, specifications of energy using systems, operating and maintenance procedures, and unusual operating constraints. (3) Inventory of major systems consuming energy from affected boiler(s). (4) A review of available architectural and engineering plans, facility operation and maintenance procedures and logs, and fuel usage. (5) A list of major energy conservation measures that are within the facility's control. (6) A list of the energy savings potential of the energy conservation measures identified. (7) A comprehensive report detailing the ways to improve efficiency, the cost of specific improvements, benefits, and the time frame for recouping those investments.

As stated in § 63.11201, you must comply with the applicable operating limits:

TABLE 3 TO SUBPART JJJJJJ OF PART 63—OPERATING LIMITS FOR BOILERS WITH EMISSION LIMITS

If you demonstrate compliance with applicable emission limits using * * *	You must meet these operating limit * * *
1. Fabric filter control	a. Maintain opacity to less than or equal to 10 percent opacity (daily block average); OR b. Install and operate a bag leak detection system according to § 63.11224 and operate the fabric filter such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during each 6-month period.
2. Electrostatic precipitator control.	a. Maintain opacity to less than or equal to 10 percent opacity (daily block average); OR b. Maintain the 30-day rolling average secondary electric power input of the electrostatic precipitator at or above the lowest 1-hour average secondary electric power measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.
3. Wet PM scrubber control	Maintain the 30-day rolling average pressure drop at or above the lowest 1-hour average pressure drop across the wet scrubber and the 30-day rolling average liquid flow-rate at or above the lowest 1-hour average liquid flow rate measured during the most recent performance test demonstrating compliance with the PM emission limitation.
4. Dry sorbent or carbon injection control.	Maintain the 30-day rolling average sorbent or carbon injection rate at or above the lowest 2-hour average sorbent flow rate measured during the most recent performance test demonstrating compliance with the mercury emissions limitation. When your boiler operates at lower loads, multiply your sorbent or carbon injection rate by the load fraction (e.g., actual heat input divided by the heat input during performance stack test, for 50 percent load, multiply the injection rate operating limit by 0.5).
5. Any other add-on air pollution control type.	This option is for boilers that operate dry control systems. Boilers must maintain opacity to less than or equal to 10 percent opacity (daily block average).
6. Fuel analysis	Maintain the fuel type or fuel mixture (annual average) such that the mercury emission rates calculated according to § 63.11211(b) is less than the applicable emission limits for mercury.
7. Performance stack testing	For boilers that demonstrate compliance with a performance stack test, maintain the operating load of each unit such that is does not exceed 110 percent of the average operating load recorded during the most recent performance stack test.
8. Continuous Oxygen Monitor	Maintain the 30-day rolling average oxygen level at or above the lowest 1-hour average oxygen level measured during the most recent CO performance stack test.

* * * * *

As stated in § 63.11211, you must comply with the following requirements for establishing operating limits:

TABLE 6 TO SUBPART JJJJJJ OF PART 63—ESTABLISHING OPERATING LIMITS

If you have an applicable emission limit for * * *	And your operating limits are based on * * *	You must * * *	Using * * *	According to the following requirements
1. Particulate matter or mercury.	a. Wet scrubber operating parameters.	i. Establish a site-specific minimum pressure drop and minimum flow rate operating limit according to § 63.11211(b).	(1) Data from the pressure drop and liquid flow rate monitors and the particulate matter or mercury performance stack test.	(a) You must collect pressure drop and liquid flow-rate data every 15 minutes during the entire period of the performance stack tests;
	.....	.....	.....	(b) Determine the average pressure drop and liquid flow-rate for each individual test run in the three-run performance stack test by computing the average of all the 15-minute readings taken during each test run.
	b. Electrostatic precipitator operating parameters.	i. Establish a site-specific minimum secondary electric power according to § 63.11211(b).	(1) Data from the secondary electric power monitors during the particulate matter or mercury performance stack test.	(a) You must collect secondary electric power input data every 15 minutes during the entire period of the performance stack tests;
	.....	.....	.....	(b) Determine the secondary electric power input for each individual test run in the three-run performance stack test by computing the average of all the 15-minute readings taken during each test run.
2. Mercury	a. Activated carbon injection.	i. Establish a site-specific minimum activated carbon injection rate operating limit according to § 63.11211(b).	(1) Data from the activated carbon rate monitors and mercury performance stack tests.	(a) You must collect activated carbon injection rate data every 15 minutes during the entire period of the performance stack tests;

TABLE 6 TO SUBPART JJJJJJ OF PART 63—ESTABLISHING OPERATING LIMITS—Continued

If you have an applicable emission limit for * * *	And your operating limits are based on * * *	You must * * *	Using * * *	According to the following requirements
	.....	.....	.....	(b) Determine the average activated carbon injection rate for each individual test run in the three-run performance stack test by computing the average of all the 15-minute readings taken during each test run.
	.....	.....	.....	(c) When your unit operates at lower loads, multiply your activated carbon injection rate by the load fraction (e.g., actual heat input divided by heat input during performance stack test, for 50 percent load, multiply the injection rate operating limit by 0.5) to determine the required injection rate.
3. Carbon monoxide.	a. Oxygen	i. Establish a unit-specific limit for minimum oxygen level.	(1) Data from the oxygen analyzer system specified in § 63.11224(a).	(a) You must collect oxygen data every 15 minutes during the entire period of the performance stack tests;
	.....	.....	.....	(b) Determine the average hourly oxygen concentration for each individual test run in the three-run performance stack test by computing the average of all the 15-minute readings taken during each test run.
4. Any pollutant for which compliance is demonstrated by a performance test.	a. Boiler operating load.	i. Establish a unit specific limit for maximum operating load according to § 63.11212(c).	(1) Data from the operating load monitors (fuel feed monitors or from steam generation monitors).	(a) You must collect operating load data (fuel feed rate or steam generation data) every 15 minutes during the entire period of the performance test.
	.....	.....	.....	(b) Determine the average operating load by computing the hourly averages using all of the 15-minute readings taken during each performance test.
	.....	.....	.....	(c) Determine the average of the three test run averages during the performance test, and multiply this by 1.1 (110 percent) as your operating limit.

As stated in § 63.11222, you must show continuous compliance with the emission limitations for affected sources according to the following:

TABLE 7 TO SUBPART JJJJJJ OF PART 63—DEMONSTRATING CONTINUOUS COMPLIANCE

If you must meet the following operating limits * * *	You must demonstrate continuous compliance by * * *
1. Opacity	a. Collecting the opacity monitoring system data according to § 63.11224(e) and § 63.11221; and b. Reducing the opacity monitoring data to 6-minute averages; and c. Maintaining opacity to less than or equal to 10 percent (daily block average).
2. Fabric Filter Bag Leak Detection Operation.	Installing and operating a bag leak detection system according to § 63.11224 and operating the fabric filter such that the requirements in § 63.11222(a)(4) are met.
3. Wet Scrubber Pressure Drop and Liquid Flow-rate.	a. Collecting the pressure drop and liquid flow rate monitoring system data according to §§ 63.11224 and 63.11221; and b. Reducing the data to 30-day rolling averages; and c. Maintaining the 30-day rolling average pressure drop and liquid flow-rate at or above the operating limits established during the performance test according to § 63.1140.
4. Dry Scrubber Sorbent or Carbon Injection Rate.	a. Collecting the sorbent or carbon injection rate monitoring system data for the dry scrubber according to §§ 63.11224 and 63.11220; and b. Reducing the data to 30-day rolling averages; and c. Maintaining the 30-day rolling average sorbent or carbon injection rate at or above the minimum sorbent or carbon injection rate as defined in § 63.11237.
5. Electrostatic Precipitator Total Secondary Electric Power Input.	a. Collecting the total secondary electric power input monitoring system data for the electrostatic precipitator according to §§ 63.11224 and 63.11220; and b. Reducing the data to 30-day rolling averages; and c. Maintaining the 30-day rolling average total secondary electric power input at or above the operating limits established during the performance test according to § 63.11214.
6. Fuel Pollutant Content	a. Only burning the fuel types and fuel mixtures used to demonstrate compliance with the applicable emission limit according to § 63.11214 as applicable; and b. Keeping monthly records of fuel use according to § 63.11222.

TABLE 7 TO SUBPART JJJJJJ OF PART 63—DEMONSTRATING CONTINUOUS COMPLIANCE—Continued

If you must meet the following operating limits * * *	You must demonstrate continuous compliance by * * *
7. Oxygen content	a. Continuously monitor the oxygen content in the combustion exhaust according to § 63.11224. b. Reducing the data to 30-day rolling averages; and c. Maintain the 30-day rolling average oxygen content at or above the operating limit established during the most recent carbon monoxide performance test.
8. Carbon monoxide emissions	a. Continuously monitor the carbon monoxide concentration in the combustion exhaust according to § 63.11224(a). b. Correcting the data to 3 percent oxygen, and reducing the data to one-hour and daily block averages; c. Reducing the data from the daily averages to 10-day rolling averages; d. Maintain the 10-day rolling average carbon monoxide concentration at or below the applicable emission limit in Tables 1 of this subpart.
9. Boiler operating load	a. Collecting operating load data (fuel feed rate or steam generation data) every 15 minutes. b. Reducing the data to 30-day rolling averages; and c. Maintaining the 30-day rolling average at or below the operating limit established during the performance test according to § 63.11212(c).

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Part IV

Environmental Protection Agency

40 CFR Part 98

Mandatory Reporting of Greenhouse Gases: Technical Revisions to the Petroleum and Natural Gas Systems Category of the Greenhouse Gas Reporting Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0512; FRL–9501–9]

RIN 2060–AR09

Mandatory Reporting of Greenhouse Gases: Technical Revisions to the Petroleum and Natural Gas Systems Category of the Greenhouse Gas Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing technical corrections and revisions to the petroleum and natural gas systems source category of the Greenhouse Gas Reporting Rule. Final changes include providing clarification on existing requirements, increasing flexibility for certain calculation methods, amending data reporting requirements, clarifying terms and definitions, and technical corrections.

DATES: This rule is effective on December 28, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0512. All documents in the docket are listed in the *http://www.regulations.gov* index.

Although listed in the index, some information may not be publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available in hard copy only. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA's Docket Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Av., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReportingRule@epa.gov.* For technical information and implementation materials, please go to the Web site *http://www.epa.gov/climatechange/emissions/subpart/w.html.* To submit a question, select Rule Help Center, followed by ''Contact Us.''

Worldwide Web (WWW). In addition to being available in Docket ID No. EPA–HQ–OAR–2011–0512, following the Administrator's signature, an electronic copy of this final rule will also be available through the WWW on EPA's Greenhouse Gas Reporting Program Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). These amended regulations could affect owners or operators of petroleum and natural gas systems. Regulated entities may include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Source category	NAICS	Examples of affected facilities
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Other types of facilities not listed in the table could also be affected. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR Part 98 subpart A, and 40 CFR Part 98 subpart W. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

What is the effective date? This final rule is effective on December 28, 2011. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section CAA 307(d)(1), which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the purposes underlying APA section 553(d) in making this rule effective on December 28, 2011. Section 5 U.S.C. 553(d)(3) allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' As explained below, EPA finds that there is good cause for parts of this rule to become effective on December 28, 2011 even though this will result in an effective date fewer than 30 days from the date of publication in the **Federal Register**.

The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. That purpose, to provide affected parties a reasonable time to prepare for the rule before it comes into effect, is not necessary in this case, as most of the affected provisions in the final rule clarify existing provisions, provide flexibilities to sources covered by the reporting rule, or otherwise relieve a restriction. For example, this final rule clarifies the definition of some of the industry segments, and in some cases, provides further flexibility relating to reporting obligations that would otherwise have been required by the November 2010 Subpart W (the 2010 final rule) 75 FR 74458. Therefore, EPA finds good cause exists to make this rule effective on December 28, 2011.

Judicial Review. Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the

Court) by February 21, 2012. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Section 307(d)(7)(B) of the CAA also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

AGA American Gas Association
AGR Acid Gas Removal
API American Petroleum Institute
AXPC American Exploration and Production Council
BAMM Best Available Monitoring Methods
BOEMRE Bureau of Ocean Energy Management, Regulation and Enforcement
CAA Clean Air Act
CBI confidential business information
CEC Chesapeake Energy Corporation
CEMS continuous emission monitoring systems
cfd cubic feet per day
CFR Code of Federal Regulations
CH_4 methane
CO_2 carbon dioxide
CO_2e CO_2-equivalent
COR certificate of representation
e-GGRT electronic greenhouse gas reporting tool
EIA Economic Impact Analysis
EOR enhanced oil recovery
EPA U.S. Environmental Protection Agency
FCML Field Code Master List
FERC Federal Energy Regulatory Commission
FR Federal Register
GHG greenhouse gas
GPA Gas Processors Association
GOR gas to oil ratio
GRI Gas Research Institute
Hp horsepower
GWP global warming potential
HHV high heat value
IBR incorporation by reference
ICR information collection request
LDC Local Distribution Company
ISO International Organization for Standardization
kg kilograms
LDCs local natural gas distribution companies
LNG liquefied natural gas
M&R meters and regulators
mmBtu million British thermal units
mmHg millimeters of Mercury
MMscfd million standard cubic feet per day
$mTCO_2e$ million metric tons carbon dioxide equivalent
MRR mandatory GHG reporting rule
N_2O nitrous oxide
NAICS North American Industry Classification System
NGLs natural gas liquids
NPS nominal pipe size
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality, Planning and Standards
OMB Office of Management and Budget
PHMSA Pipeline and Hazardous Material Safety Administration
QA/QC quality assurance/quality control
RFA Regulatory Flexibility Act
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement and Fairness Act
T–D Transmission Distribution
TSD technical support document
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
USC United States Code

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I. Background

A. Organization of This Preamble

This preamble consists of three sections. The first section provides a brief history of 40 CFR part 98 and 40 CFR part 98, subpart W (''subpart W'').

The second section of this preamble summarizes the revisions made to specific requirements for subparts A and W being incorporated by this action. The amendments finalized in this action reflect the changes to subpart W proposed in two separate proposed rules (76 FR 56010, 76 FR 47392). This section also describes the major changes made to this source category since proposal and provides a brief summary of significant public comments and EPA's responses. Additional responses to significant comments can be located in the document, ''Mandatory Reporting of Greenhouse Gases—Technical Revisions to the Petroleum and Natural Gas Systems Category of the Greenhouse Gas Reporting Rule: EPA's Response to Public Comments'' see EPA–HQ–OAR–2011–0512.

Finally, the last section discusses the various statutory and executive order requirements applicable to this rulemaking.

B. Background

This action finalizes amendments to provisions in 40 CFR part 98, subpart A. The 2009 final GHG reporting rule was signed by the EPA Administrator Lisa Jackson on September 22, 2009 and published in the **Federal Register** on October 30, 2009 (74 FR 56260, October 30, 2009 hereinafter ''GHGRP''). The 2009 final rule, which became effective on December 29, 2009, includes reporting of GHGs from various facilities and suppliers consistent with the 2008 Consolidated Appropriation Act (Consolidated Appropriations Act, 2008, Public Law 110–161, 121 Stat. 1844,

2128). Subsequent notices were published in 2010 finalizing the requirements for subpart W (74 FR 74458).

In an earlier action, EPA proposed minor technical corrections to specific provisions in various subparts of the greenhouse gas reporting rule, including subpart W on August 4, 2011 (76 FR 47392), hereinafter ''GHGRP Corrections Proposal''). In that action, EPA proposed several corrections to specific provisions in subpart W to address minor errors in equations and to correct certain erroneous citations.

In this action, EPA is finalizing amendments to provisions in subpart W that were proposed in both the September 9, 2011 GHGRP Revisions Proposal action and the August 4, 2011 GHGRP Corrections Proposal action. Responses to comments submitted on both actions can be found in section II.C of this preamble and also under the document ''Mandatory Reporting of Greenhouse Gases—Technical Revisions to the Petroleum and Natural Gas Systems Category of the Greenhouse Gas Reporting Rule: EPA's Response to Public Comments'' See EPA–HQ–OAR–2011–0512.

C. Legal Authority

The EPA is promulgating these rule amendments under its existing CAA authority, specifically authorities provided in CAA section 114.

As stated in the preamble to the 2009 final rule (74 FR 56260, October 30, 2009), CAA section 114 provides EPA broad authority to require the information mandated by 40 CFR part 98 because such data would inform and are relevant to the EPA's obligation to carry out a wide variety of CAA provisions. As discussed in the preamble to the initial proposal (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of process or control equipment, and persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about the EPA's legal authority, see the preambles to the proposed and final rule, and related Response to Comments documents.

D. How Confidential Business Information Determinations and the Deferral of Inputs to Emission Equations Are Affected by This Action

The EPA finalized several rulemakings during 2011 in response to concerns related to the reporting and publication of information that may be considered confidential business information (CBI). For more information on the final action to defer the reporting deadline for data elements that are used by direct emitter reporters as inputs to emissions equations under EPA's Greenhouse Gas Reporting Program, please see the Final CBI Deferral Rule (75 FR 53057, August 25, 2011, hereinafter referred to the ''Final CBI Deferral Rule''). For more information generally on the various actions related to treatment of data that may be considered CBI, please see the GHG Reporting Program Web site dedicated to CBI at *http://www.epa.gov/climatechange/emissions/CBI.html.*

On May 26, 2011, the EPA published confidentiality determinations for certain data elements required to be reported under 40 CFR part 98 and finalized amendments to the Special Rules Governing Certain Information Obtained Under the Clean Air Act, which authorizes the EPA to release or withhold as confidential reported data according to the confidentiality determinations for such data without taking further procedural steps (76 FR 30782, 2011 hereinafter referred to as the ''Final CBI Rule''). The Final CBI Rule addressed reporting of data elements in 34 subparts which were determined not to be inputs to emission equations and therefore are always CBI and which are not eligible to be CBI. That rule did not make confidentiality determinations for eight subparts, including subpart W, for which reporting requirements were finalized after publication of the July 7, 2010 CBI proposal (75 FR 39094) and December 27, 2010 supplemental CBI proposal (75 FR 43889).

On August 25, 2011, the EPA published a final rule that deferred the reporting deadline for data elements that are used by direct emitter reporters as inputs to emission equations under the Mandatory Greenhouse Gas Reporting Rule (76 FR 53057, Final CBI Deferral Rule). The Final CBI Deferral Rule, included deferral of the deadline for reporting inputs to emissions equations based on the 2010 final rule for 40 CFR part 98, subpart W (75 FR 74458).

EPA intends to propose and finalize CBI determinations for 40 CFR part 98, subpart W in a separate action (or actions). This final rule does not affect the deferral of reporting nor the date until which the deadline is set for reporting those inputs to emissions equations for subpart W, which were finalized in the Final CBI Deferral Rule. For subpart W, EPA intends to finalize a deferral of any new or revised inputs affected by this final action prior to the 2012 reporting deadline.

E. How do these amendments apply to 2012 reports?

We have determined that it is feasible for owners and operators covered by this rule to implement these technical amendments for the 2011 reporting year because the revisions primarily provide additional clarification regarding applicability, and the existing regulatory requirements generally do not change the type of information that must be collected, and do not materially affect how GHG emissions or quantities are calculated. Our rationale for this determination is explained in the preamble to the proposed rule amendments.[1]

In response to comments submitted on the proposed rulemaking, we have reviewed the final amendments and determined that they can be implemented, as finalized, for the 2011 reporting year. Although in limited cases these amendments may introduce revisions to calculation procedures from those proposed (*e.g.,* for taking measurements at the sub-basin level as opposed to the field level), in response to comment, EPA has introduced flexibilities in the final rule in order to ensure that there are no new monitoring requirements for 2011.

As an example of the flexibility introduced in this final rule, in the GHGRP Revisions Proposal, EPA proposed an alternative approach to taking measurement at the field level, as suggested by industry, by proposing to take measurement at a sub-basin level. Industry requested that EPA reconsider the use of a field-level measurement plan for specific emissions sources including well venting for liquids unloading and well venting for well completions/workovers, by stating that it was not clear how to assign a field name to new wells, nor how to address wells that were not contained in the 2008 EIA Field Code Master List which was incorporated by reference in the Subpart W Final Rule. The foundation of the sub-basin approach is defining a sub-basin category through the use of a county level designation and the distinction of the type of hydrocarbon formation. The hydrocarbon formations

[1] 76 FR 56010 (September 9, 2011).

can be grouped into five types: Oil, high permeability gas, shale gas, coal seam, or other tight reservoir rock. For example, wells producing coal bed methane from formation ''X'' with wellhead coordinates within county ''A'' would be one sub-basin category. Further, wells producing from tight formation ''Y'' with wellhead coordinates within county ''A'' would be a second sub-basin category. In the event that a specific county includes more than one formation (*e.g.,* coal bed methane and tight sands), then the reporter would use the most specific designation (*e.g.,* coal bed methane). EPA analyzed the approach suggested by the industry and believes that the sub-basin category provides similar quality data as the EIA field code would provide, while still achieving the appropriate level of data representativeness. Please see Economic Impact Analysis Memorandum in Docket ID EPA–HQ–OAR–2011–0512.

Therefore, as industry suggested, EPA proposed the alternative approach of using a sub-basin measurement level for measurement of specific emission sources in the onshore production industry segment, and is finalizing that approach in this action. For example, commenters were generally supportive of EPA's proposed change to require calculation and reporting for onshore production at the sub-basin level, as opposed to the field level. However, one commenter requested to continue to use field as a classification mechanism for groups of wells within each basin. The commenter stated that they had already conducted field-level calculations for 2011. In response to this concern, and for the 2011 reporting year only, EPA is allowing reporters who took measurement at the field level to apply those measurements to the equivalent sub-basins applicable to their facility as a best available monitoring method (BAMM). The use of a field-level measurement as a BAMM for a sub-basin measurement fits within a recently finalized action (76 FR 59533), where EPA granted subpart W reporters the option to use BAMM for all of 2011 without reporters being required to submit a request for approval from the Administrator. For data collection in 2012 and beyond, reporters must use the sub-basin level for data collection.

By way of further example, the 2010 final rule required facilities to assume that pneumatic pumps and pneumatic devices were operational the entire year. We proposed that instead of assuming operation for 8,760 hours per year, facilities would use their actual operating hours. While many reporters agreed with the proposed amendment, they encouraged EPA to retain the option of assuming 100 percent operation during the reporting year, so as not to require facilities to track operating hours. In this action, reporters now have the option to use actual operating hours or the default of 8,760 hours per year for both pneumatic devices and pneumatic pumps when calculating GHG emissions using equation W–1 and W–2 in 40 CFR 98.233(a) and (b) respectively. Thus in any given data collection year, reporters now have the option of using the default or entering their estimated amount of hours for operation of their pneumatic devices and pumps. This option will not be limited to the 2011 data collection year.

Lastly, the 2010 final rule requires reporters to take measurement once in a two year cycle, beginning with the first year of data collection, for emission sources including the gas well venting from completions or workovers with hydraulic fracturing emission source type. In this action, EPA is revising several provisions related to these emission sources and because the revisions are expected to be published late in the 2011 data collection year, EPA is allowing reporters additional flexibility by giving the option to take their first measurement in the second year as opposed to the first year, as is stated in the rule, 40 CFR 98.234(g). Reporters who chose this option must take their measurement before the September 28, 2011 reporting deadline for subpart W.

II. Overview of Final Amendments to the General Provisions, and Petroleum and Natural Gas Systems Source Category and Responses to Major Public Comments

A. Amendments to the General Provisions

Purpose and Scope. In this action, EPA is amending 40 CFR 98.1 of the general provisions by adding paragraph (c) which states that for the purposes of applying the terms owner and operator used in subpart A, facilities required to report under the onshore petroleum and natural gas production industry segment of 40 CFR part 98, subpart W will use the definition of onshore petroleum and natural gas production owner or operator in 40 CFR 98.238.

Definitions. EPA is finalizing amendments to definitions in 40 CFR 98.6. First, we are amending the text for the definition for continuous bleed pneumatic devices, in 40 CFR 98.6 to clarify that continuous bleed devices supply natural gas to process control devices, and not measurement devices, as suggested by the 2010 final rule.

Secondly, we are amending the definition of intermittent bleed pneumatic devices, as proposed, to clarify that these devices automatically maintain the process conditions and that the devices are snap-acting or throttling devices that discharge all or a portion of the full volume of the actuator intermittently when control action is necessary.

There were no other major changes to 40 CFR subpart A since the proposal.

B. Responses to Major Comments Submitted on the General Provisions

1. Further Delineation of Types of Intermittent Bleed Pneumatic Devices

Comment: Commenters were generally supportive of EPA's proposal to clarify the definitions for pneumatic devices in the September 9, 2011 GHGRP Revisions Proposal. One commenter, however, specifically noted that further clarification to the definition for intermittent devices was necessary beyond the proposal and requested that EPA list out examples of intermittent bleed devices.

Response: EPA believes that the definition for intermittent bleed pneumatic devices finalized in this action is sufficient for reporters to use as a guideline in determining what would constitute an intermittent bleed pneumatic device. The definition for intermittent pneumatic devices finalized in this action clarifies that these types of pneumatic devices automatically maintain the process conditions and discharge all or a portion of the full volume of the actuator intermittently.

C. Final Amendments to the Petroleum and Natural Gas Systems Source Category

In this action, EPA is amending several provisions to the Final Subpart W Rule published in November 2010. The major amendments are listed in this section, followed by a more detailed summary of the final amendments to the various provisions. Where appropriate, it is indicated that an amendment was finalized as proposed, or an amendment as finalized that differed from the GHGRP Corrections proposal or the GHGRP Revisions proposal. Other changes and clarifications included in this section are administrative in nature. For a full description of the rationale for these and any other significant change to 40 CFR part 98, subpart W, see the ''Mandatory Reporting of Greenhouse Gases—Technical Revisions to the Petroleum and Natural Gas Systems

Category of the Greenhouse Gas Reporting Rule: EPA's Response to Public Comments'' and section II.D Responses to Major Comments Submitted on the Petroleum and Natural Gas Systems Source Category.

Major Changes Since Proposal

1. Calculating GHG Emissions

- Inclusion of clarification for emergency blowdown vent stack emission sources that are covered under 40 CFR 98.233(i).
- Revising calculation methodologies for natural gas distribution industry segment in 40 CFR 98.233(q) and 40 CFR 98.233(r) to allow for reporters to use a 5-year rolling survey plan.
- Revising the emission factor for intermittent pneumatic devices.

2. Data Reporting Requirements

- Not adopting the proposed amendments to include reporting of a unique name or ID for specified emissions sources under the onshore petroleum and natural gas production industry segment throughout 40 CFR 98.236.
- Replacing the term ''a unique name or ID number for the blowdown vent stack'' in 40 CFR 98.236(c)(7)(iii) to ''a unique name or ID number for the unique volume type.''
- Inclusion of data reporting requirements for natural gas distribution industry segment to reflect the 5-year rolling survey plan.

3. Definitions

- Revising definition for associated with a well-pad in 40 CFR 98.238 by revising the last sentence.
- Inclusion of a definition for a 5th sub-basin category for oil in the 40 CFR 98.238 sub-basin definitions.

4. Emission Factor Tables

- Revising emission factors in tables W–1A, W–2, W–3, W–4, W–5, W–6, and W–7 to adjust for 60°standard temperature and 14.7 psia pressure.

The final amendments are organized following the different sections of the subpart W regulatory text beginning with 40 CFR 98.230 and going through 98.238. As described above in Section II.E., one of the major changes is for the onshore petroleum and natural gas production industry segment, where the reporting level has been changed from the field level to the sub-basin level.

Source Category Definitions. In general, we are finalizing amendments to the source category definitions as proposed to clarify both the coverage of individual industry segments and the boundaries for different industry segments. The purpose of these amendments is primarily to clarify the coverage of the rule and ensure applicability under 40 CFR part 98 is as originally intended.

Onshore Petroleum and Natural Gas Production. We are making several amendments to the definition for the onshore petroleum and natural gas production (also referred to as onshore production) industry segment in 40 CFR 98.230(a)(2). First, EPA is revising the term ''associated with a well-pad'' to state that the onshore production industry segment includes equipment that is ''on a single well-pad or associated with a single well-pad.'' These equipment are included in the onshore production industry segment irrespective of the point of emissions from that equipment (*e.g.,* if emissions from one or more pieces of onshore oil and gas production equipment are sent to a common header either to a flare or vent, that vent or flare would also be included). Next, EPA is amending the definition to clarify that both dehydrators and storage vessels that are on a single well-pad or associated with a single well-pad are included as types of equipment that are considered part of the onshore production industry segment if they are owned or operated by the onshore production owner or operator, including equipment that is leased, contracted or rented.

Finally, we are revising the text to state that enhanced oil recovery (EOR) operations that use either CO_2 or natural gas are a part of this industry segment.

Onshore Natural Gas Processing. EPA is including several clarifications to the onshore natural gas processing industry segment definition in 40 CFR 98.230(a)(3). First, we are striking the term ''and recovers'' from the first sentence, in order to more clearly characterize the unique activities performed at natural gas processing plants. Second, we are revising the text to clarify that this industry segment includes one or a combination of the following three processes: separation of natural gas liquids (NGLs) from produced natural gas, separation of non-methane gases from produced natural gas, or separation of NGLs into one or more component mixtures. Third, we are amending the definition to clarify that separation means one or more of the following processes: forced extraction of natural gas liquids, sulfur and carbon dioxide removal, fractionation of NGLs, or the capture of CO_2 separated from natural gas streams. Fourth, we are striking the phrase ''this industry segment does not include reporting of emissions from gathering lines and boosting stations'' because the final amendments already clarify the definition of ''onshore natural gas processing'' and therefore, it is unnecessary to discuss that which is excluded. Fifth, we are revising the threshold contained in the definition of the onshore natural gas processing segment to be 25 million standard cubic feet annual average daily throughput. Finally, we are replacing out the term ''facility'' with the term ''plant''.

Onshore Natural Gas Transmission Compression. EPA is finalizing several clarifications to the onshore natural gas transmission compression industry segment definition in 40 CFR 98.230(a)(4). First, we are removing the term ''at elevated pressure'' to address confusion associated with what ''elevated pressure'' actually meant. Next, we are including a definition in 40 CFR 98.238 of transmission pipeline to address concerns that this term was undefined and could have a broader meaning than that which was intended in the 2010 final rule. We are defining a transmission pipeline to mean a Federal Energy Regulatory Commission (FERC) rate-regulated interstate pipeline, a state rate-regulated intrastate pipeline, or a pipeline that falls under the ''Hinshaw Exemption'' as referenced in Section 1(c) of the Natural Gas Act, 15 U.S.C. 717–717 (w)(1994).

Next, we are clarifying the definition for the transmission compression industry segment. The final rule provides that natural gas transmission compression facilities not only move natural gas from production fields or gas processing plants, but also move natural gas coming from other transmission compressors. In addition, we are explicitly stating that natural gas transmission compression facilities not only move natural gas into distribution pipelines, but also into liquefied natural gas storage or into underground storage.

We are removing the term ''natural gas dehydration'' from the industry segment definition because this term did not represent a unique characteristic of facilities with natural gas transmission compression. Finally, we are removing the reference to ''gathering lines and boosting stations'' and ''facility'' for the same reasons as explained above relating to the onshore processing industry segment definition.

Natural Gas Distribution. EPA is amending the natural gas distribution industry segment definition to further clarify applicability under the rule. First, we are replacing the term ''city gate station'' with the term ''metering-regulating station'' in 40 CFR 98.230(a)(8). This amendment is designed to more clearly express EPA's intent using language readily understood by industry. As a

harmonizing change, we are also adding a definition for the term ''metering-regulating station'' in 40 CFR 98.238 to state that, ''[a]n above ground station that meters the flow rate, regulates the pressure, or both, of natural gas in a natural gas distribution facility. This does not include customer meters, customer regulators, or farm taps''. With this amendment, we are clarifying key concepts in the definition, without actually changing coverage by the rule.

We are removing the parenthetical term ''(not interstate transmission pipelines or intrastate transmission pipelines)'' as this statement was not necessary. Instead we are adding a definition for ''distribution pipeline'' in 40 CFR 98.238 that clarifies that ''distribution pipelines'' are only those designated as such by the Pipeline and Hazardous Material Safety Administration (PHMSA) 49 CFR 192.3.

Next, we are removing the term ''excluding customer meters'' and ''physically deliver natural gas to end users'' because the definition for ''meter-regulator'' stations described above already addresses this exclusion.

Finally, we are amending the industry segment definition to explicitly state that the LDC reporting as a single facility is that which is operated in a single state and regulated as a separate operating company by a public utility commission or that is operated as an independent municipally-owned distribution system. This change ensures that the definition of LDC is consistent between subpart W and subpart NN.

Greenhouse Gases to Report. We are amending several provisions for the greenhouse gases that must be reported in 40 CFR 98.232.

We are amending 40 CFR 98.232(c) to clarify that the source listed in 40 CFR 98.232(c)(1) through (22) are on a single well-pad or associated with a single well-pad. This change is consistent with the final changes to the onshore production industry segment definition in 40 CFR 98.230(a)(2) described above. In 40 CFR 98.232 (c)(22), EPA is replacing the term ''production well pad'' with ''petroleum and natural gas production facility as defined in 98.238''. This change makes the term consistent with language used throughout Subpart W.

Next, we are amending 40 CFR 98.232(i) by replacing the term ''custody transfer city gate station'' with the term ''transmission-distribution transfer station'' and replacing the term ''non-custody transfer station'' with the term ''metering-regulating station.'' We are amending the source types for this industry segment by removing the text ''Customer meters are excluded.'' This text was removed because it was no longer necessary with the addition of the term ''transmission-distribution transfer station'' and its definition. Further we are amending 40 CFR 98.232(i) to state that CO_2, CH_4 and N_2O emissions are to be reported from the natural gas distribution industry segment. This clarification is consistent with the calculation procedures in 40 CFR 98.233. Finally, EPA added emissions sources that were already required to be reported under 40 CFR part 98, subpart W but were not listed under 40 CFR 98.232 (i) (*i.e.,* pipeline main equipment leaks, service line equipment leaks, and stationary combustion).

Next, we are removing and reserving 40 CFR 98.232(j), as proposed, in order to address concerns raised that the inclusion of this provision resulted in confusion amongst reporters as they were unsure how this provision aligned with the flare emissions that are captured under the applicable emissions source calculations throughout 40 CFR 98.233. Accordingly, we are also finalizing, as proposed, the introductory sentences to 40 CFR 98.232(d), (e), (f), (g), (h), and (i) to clarify that N_2O emissions are also required to be reported under these industry segments. We are making a harmonizing change to 40 CFR 98.232(a), to remove the reference to 40 CFR 98.232 (j).

Lastly, we are amending 40 CFR 98.232(k) to clarify that the onshore petroleum and natural gas production and natural gas distribution industry segments are to report their combustion emissions under 40 CFR part 98, subpart W, while the remaining industry segments are to report their combustion emissions under subpart C of part 98.

Calculating Greenhouse Gas Emissions. We are making several clarifications, corrections, and amendments throughout 40 CFR 98.233.

Natural Gas Pneumatic Device Venting

EPA is modifying Equation W–1 by adding the subscript ''t'' to the equation to represent the different device types. EPA is removing the subscript ''s,'' and the word ''standard'' from the definition of parameter $Mass_{s,i}$ because mass emissions do not need to be reported at standard conditions. EPA is amending Equation W–1, to include a parameter ''T'' that estimates the total number of hours in a year the devices were operational instead of assuming that the natural gas pneumatic devices was operating the whole year. However, EPA has provided a value of 8,760 hours for reporters to use as a default option. Further, EPA is clarifying that compositions in 40 CFR 98.233(u)(2)(i) may be used for the onshore petroleum and natural gas production in the definition for ''GHG_i''. However, for onshore natural gas transmission compression, and underground natural gas storage industry segments, set values of 0.975 for CH_4 and 1.1×10^{-2} for CO_2 are used. The value of 0.975 represents the methane fraction of total hydrocarbon (THC) which is the basis of the emission factors in Tables W–3 for Natural Gas Transmission Compression and Table W–4 for Underground Natural Gas Storage where the non-hydrocarbon fraction of pipeline quality gas (made up of primarily carbon dioxide and nitrogen) is approximately 2%. The carbon dioxide fraction of total hydrocarbons in Tables W–3 and W–4 is determined from public records on pipeline gas quality. The value of 1.1×10^{-2} represents the ratio of CO_2 to methane in transmission gas. Under the parameter definition of $Conv_i$, EPA amended the value of emission factors to 0.000403 for CH_4 and 0.00005262 for CO_2 to account for an error in the previous factor not being adjusted to standard conditions. EPA is revising 40 CFR 98.233(a) by adding 40 CFR 98.233(a)(3), which allows reporters to determine the type of pneumatic devices using engineering estimation based on best available information. This amendment is in response to questions about how to determine whether a pneumatic device is continuous high bleed, continuous low bleed, or intermittent bleed and the burden associated with determining the type of pneumatic device.

Lastly, the data reporting requirements in 40 CFR 98.236(c)(1)(iv), which are associated with pneumatic devices, have been clarified to require aggregate emissions to be reported for all continuous high bleed pneumatic devices, for all intermittent bleed pneumatic devices, and for all continuous low bleed pneumatic devices separately at the facility level.

Natural Gas Driven Pneumatic Pump Venting

We are amending Equation W–2 in 40 CFR 98.233(c), to include a parameter ''T'' that estimates the total number of hours in a year the pumps were operational instead of assuming that the pneumatic pump was operating the whole year. EPA has provided a value of 8,760 hours for reporters to use as a default option. EPA is removing the subscript ''s,'' since mass emissions do not need to be reported at standard conditions.

Acid Gas Removal (AGR) Vents. EPA is amending 40 CFR 98.233(d) to clarify EPA's intent and to correct errors.

We are revising provisions in 40 CFR 98.233(d) to clarify how the four different methods are to be used for determining GHG emissions from acid gas removal units. First, we are amending 40 CFR 98.233(d)(1) to specify that the use of CEMS is required if a CO_2 concentration monitor and volumetric flow rate monitor are installed. This amendment was made to clarify what conditions must be met to satisfy Tier 4 calculation requirement in Subpart C for Acid Gas Removal vents. EPA is allowing reporters the flexibility to follow the calculation, quality assurance, reporting, and recordkeeping requirements in Tier 4 in Subpart C, manufacturer instructions, or industry standard practice for CEMS units already in place.

EPA is revising 40 CFR 98.233(d)(2), (d)(3), and (d)(4) to clarify that if a facility has a vent meter but no CEMs available, then they would use Calculation Methodology 2. If a facility has neither a CEMs available nor a vent meter in place (with the added flexibility to use industry consensus standards to calibrate the vent meters), then either Calculation Methodology 3 or 4 of 40 CFR 98.233(d) may be used.

Next, we are revising the equation used for estimating CO_2 emissions from acid gas removal vents in Equation W–4A and Equation W–4B in Calculation Methodology 3 in 40 CFR 98.233(d). This new equation addresses issues that arose with the previous equation, because that equation was better suited to situations where the change in CO_2 volume fraction between the inlet gas and the outlet gas would be relatively low, such as 1 percent. These two new equations will increase the accuracy of the calculation while adding no additional burden to reporters because the same parameters are monitored. Further details on the revised equations have been provided in the memo ''Acid Gas Removal Vents—Engineering Calculation Revisions'' located in the docket: EPA–HQ–OAR–2011–0512.

EPA is amending several associated data reporting requirements in 40 CFR 98.236(c)(3). First, we are clarifying that the annual average CO_2 content should be reported for volume fraction measurements undertaken in 40 CFR 98.233(d). Second, we are clarifying that reporters must report the annual quantity of CO_2 recovered from the AGR unit and the CO_2 emissions from the AGR unit separately. Third, we are finalizing the reporting of a unique ID for each AGR unit in industry segments other than onshore petroleum and natural gas production, as proposed (see Section II.D. of the preamble for further details on this issue). Lastly, we are asking reporters to indicate which methodology they are using to calculate emissions from AGRs.

Dehydrator Vents. EPA is amending several of the provisions in 40 CFR 98.233(e) for calculating GHGs from dehydrator vents.

First, we are clarifying that the equipment threshold referenced throughout this section for glycol dehydrators is based on annual average daily throughput at standard conditions. This amendment was necessary to address ambiguity in the final rule provisions regarding determination of the average throughput.

Next, we are clarifying that gases other than natural gas, such as nitrogen, flash gas from the flash tanks, or dry gas from the absorber, that are used as stripping gases satisfy the requirements stated in 40 CFR 98.233(e)(1)(vii). EPA is also correcting the citation in 40 CFR 98.233(e)(1)(xi), (e)(1)(xi)(A) through (e)(1)(xi)(C).

Further, EPA clarified parameters in Equation W–5. EPA has finalized the use of 60 degree Fahrenheit and 14.7 psia as standard conditions for all of subpart W; therefore, parameter EF_i was revised to reflect the standard conditions. In addition, EPA clarified that the parameter 1,000 converts emissions from thousand standard cubic feet to standard cubic feet instead of cubic feet.

Next, we are also amending 40 CFR 98.233(e)(6) to clarify that GHG mass emissions from glycol dehydrators are to be calculated from volumetric GHG emissions using calculations in 40 CFR 98.233(v) where as GHG volumetric and mass emissions from desiccant dehydrators should be calculated using paragraphs 40 CFR 98.233(u) and 98.233(v).

Accordingly, we are clarifying in 40 CFR 98.236(c)(4) the requirement to report vented and flared emissions separately. We are also clarifying the data reporting requirements by specifying that should any vent gas controls be used on glycol dehydrators with a throughput less than 0.4 million standard cubic feet, that reporters must indicate that in their annual reports. Additionally, we are finalizing the reporting of a unique ID, as proposed, for each glycol dehydrator in industry segments other than onshore petroleum and natural gas production (see Section II.D. of the preamble for further details on this issue). Finally, we are clarifying that emissions from desiccant dehydrators must be reported at the facility level.

Well Venting for Liquids Unloadings. First, we are revising 40 CFR 98.233(f) Calculation Methodology 1 by finalizing several amendments that were proposed, including that sampling is to be done at a sub-basin level as opposed to a field-level. Further, we are finalizing the provision stating that the average flow rate must be determined for one well in a tubing diameter group and pressure group in each sub-basin category. As proposed in the GHGRP Revisions Proposal, EPA has also added a definition for the term ''pressure groups'' in 40 CFR 98.238 to inform reporters of the ranges for the pressure groupings that are applicable to the sub-basins, and the types of pressures that may be used for those groupings. The pressure ranges, as proposed and finalized, were optimized using HPDI well counts in 5 psig pressure increments from zero gauge pressure to 200 psig. The fifth ''unbounded'' pressure range is ''greater than 200 psig,'' which EPA believes will have very few well liquids unloading venting to the atmosphere. The three tubing diameter ranges, equal or less than 1 inch, greater than 1 inch and equal or less than 2 inch, and greater than 2 inch, were derived from gas well tubing suppliers' specifications, as proposed. The relevancy of these pressure ranges and tubing diameter ranges is that liquids unloading venting is dependent on both the shut-in pressure of the reservoir (shut-in by liquids accumulation) and velocity of gas pushing liquids up the tubing, which is a function of tubing diameter. For further background on the selection of these pressure groupings and for the analysis done see ''2011 Technical Revisions to the Petroleum and Natural Gas Systems Category of the GHG Reporting Rule: Summary of questions raised on Subpart W'' docket number EPA–HQ–OAR–2011–0512–0015 and ''Sub-Basin Entity Pressure Range Analysis'' docket number EPA–HQ–OAR–2011–0016.

EPA also clarified in 40 CFR 98.233 (f)(1)(i)(B) that the determined flow rate can be used for all other wells in that tubing diameter group and pressure group in a sub-basin category. Finally EPA clarified in 40 CFR 98.233 (f)(1)(i)(C) that a new producing sub-basin category must determine an average flow rate during the beginning of the first year of production.

In this action, we are also including corrections to Equation W–7, as proposed. EPA is modifying Equation W–7 to address the ambiguity regarding tubing diameter group and pressure group combinations in a sub-basin. Furthermore the subscripts ''t'' and ''q''

were removed along with a summation sign to clarify that emissions are calculated for all wells in a tubing diameter group and pressure group in a sub-basin. Accordingly, subscripts ''h'' and ''p'' represent wells of the same tubing diameter group and pressure group.

EPA is revising Equation W–8 and W–9 by correcting the definition for parameter $E_{a,n}$ to be $E_{s,n}$ to accurately reflect that the calculated emissions should be in standard conditions and not actual conditions. The parameter definition was also modified to state that the emissions are at standard conditions. These revisions from actual conditions to standard conditions were necessary to maintain uniformity in the approach to calculating GHG emissions across 40 CFR subpart W. EPA is including revisions to the parameters in Equation W–8 and W–9 to account for each unloading instance, q, and for each well, p, in a pressure grouping and sub-basin category. In addition, the parameter W was added to define the limits of the summation. These amendments address ambiguity with the summation operation in the 2010 final rule for this equation.

Next, we are amending the definition for ''SFR_p'' to state that the average sales flow rate of gas is to be obtained at standard conditions. We are also clarifying that Equation W–33 is to be used to convert the sales flow rate from actual to standard conditions. In addition, the definition for parameter WD_p has been clarified to mean the distance between the either the top of the well or the lowest packer to the bottom of the well. Furthermore, CD_p in Equation W–8 and TD_p in Equation W–9 represent the internal diameter of the casing and tubing, respectively. Finally, the reference to 40 CFR 98.233 (t) in 40 CFR 98.233 (f)(2) and 98.233 (f)(30) has been removed to avoid double correction for standard conditions.

For parameter SP_p in Equation W–8, EPA is allowing the use of shut-in pressure, surface pressure, or casing-to-tubing pressure of one well from the same sub-basin multiplied by the tubing pressure of each well in the same sub-basin. For parameter SP_p in Equation W–9, EPA is allowing the use of an engineering estimate based on best available data to determine the sales line pressure. EPA is adding options and flexibility because of comments suggesting that the shut-in pressure is not known for all wells. Finally, the units for SP_p in Equation W–8 and W–9 have been corrected from pounds per square inch absolute instead of pounds per square inch atmosphere.

Accordingly, in the data reporting requirements in 40 CFR 98.236(c)(5), we are making a harmonizing change, consistent with the amendments described above. Separate reporting requirements have been included for Calculation Methodology 2 and 3 because emissions are not reported by well tubing diameter grouping and pressure grouping within each sub-basin category as in Calculation Methodology 1. All added requirements are data elements used in the engineering calculation in Equation W–8 and W–9.

Gas Well Venting During Completions and Workovers from Hydraulic Fracturing. EPA is amending 40 CFR 98.233(g) to account for the changes in aggregation from field level to sub-basin category for taking measurements, as proposed. First, we are replacing the term ''field'' with ''sub-basin and well type (horizontal vs. vertical) combination'' in the parameter definitions and clarifying that the GHG emissions are determined for each sub-basin and well type combination.

Next, we are amending Equation W–10A and adding Equation W–10B. Reporters can use Equation W–10A if the backflow from all the wells in a sub-basin and well-type combination are not being metered, where as reporters can use Equation W–10B if the backflow volumes from all wells in a sub-basin and well-type combination are being metered.

In Equation W–10A, the time period parameter T_p is redefined to be the time of backflow for the completion or workover. Equation W–10A has a new parameter, FRM, which represents the ratio of backflow during completions and workovers to 30-day production rate. FRM is calculated in Equation W–12 by dividing the metered flowback volume from the measured well(s) by the 30 day production rate. This ratio allows reporters to determine a backflow rate for wells that are not measured using the first 30 days production flow rate (PR_p), which is readily available to reporters. EPA also added a reference to 40 CFR 98.233 (g)(3) in the parameter definition of SG_p.

EPA is adding Equation W–10B to allow reporters to determine emissions if the backflow volumes are measured for all wells in a sub-basin and well-type combination. Reporters must measure the complete backflow volume during the completion or workover. This is represented by the parameter FV_p in Equation W–10B.

In Equation W–10A and Equation W–10B, EPA is adding the parameter W, which is the number of wells completed or worked over using hydraulic fracturing in a sub-basin and well type combination, and, where appropriate, made the parameters applicable to each well p. These amendments correct the summation operator to make it mathematically accurate.

In Equation W–11C, EPA is finalizing amendments to allow reporters to use best engineering estimate based on best available data to determine whether the well flow of gas during backflow (*i.e.* FR_p) is sonic or sub-sonic flow. EPA also clarified in 40 CFR 98.233(g)(1)(ii) that reporters can determine whether to use Equation W–11A, which is for sub-sonic flow, or Equation W–11B, which is for sonic flow.

EPA is clarifying that paragraphs 40 CFR 98.233 (g)(1)(iv) and 40 CFR 98.233 (g)(1)(v) are applicable to Equation W–10A only. EPA is replacing 40 CFR 98.233(g)(3) with 40 CFR 98.233(g)(5). Previously, the requirements stated in these paragraphs were duplicative.

Lastly, we are finalizing several harmonizing changes to the data reporting requirements for this emissions source in 40 CFR 98.236 (c)(6)(i). We are indicating in the data reporting requirements that reporting is required for each sub-basin category and well type (horizontal or vertical) combination. EPA amended certain requirements to make them only applicable to Equation W–10A. In addition, EPA is clarifying that the flow rate and time determinations are for backflow during the completion or workover and not for when backflow is vented to the atmosphere or routed to flare. EPA is clarifying that the number of reduced emissions completions and the volume of gas recovered must be reported separately for well completions and workovers. EPA is also clarifying that emission vented directly to the atmosphere must be reported separately from emissions resulting from flaring of backflow gas from well completions and workovers with hydraulic fracturing.

Gas Well Venting During Completions and Workovers Without Hydraulic Fracturing. In this section we are revising the introductory text by deleting the term ''well workovers not involving hydraulic fracturing'' because it was repetitive. EPA also added a reference to 40 CFR 98.233(v) to convert CH_4 and CO_2 volumetric emissions to mass emission.

Second EPA is requiring reporting on a sub-basin level instead of a field level. Thus, the term ''field'' has been changed to ''sub-basin'' in the definition for the parameter ''N_{wo}'' and ''f'' in Equation W–13, consistent with the proposed change from ''field'' to ''sub-basin'' across subpart W. Additionally, we are revising the parameters and their respective definitions to correctly

represent standard conditions and not actual conditions. Finally, EPA is amending the summation operator in Equation W–13 to make it mathematically accurate. This includes adding the subscript ''p'', which is an index for each completion without hydraulic fracturing in a sub-basin, and making specific parameters in Equation W–13 applicable to each well completion, ''p''.

In the associated reporting requirements in 40 CFR 98.236 (c)(6)(ii), EPA clarified that only a total count of workovers that flare or vent gas to the atmosphere need to be reported. Additionally, EPA clarified that emissions from venting to the atmosphere and flaring must be reported separately.

Blowdown Vent Stacks. In this action, EPA is removing the term ''equipment'' and ''equipment type'' in 40 CFR 98.233(i) and replacing it with ''unique physical volume'' in this section. EPA also clarified the types of blowdowns covered. We are deleting the term ''to atmosphere'' because not every blowdown will result in the blowdown chamber being brought to atmospheric pressure, thus more fully portraying EPA's intent to cover these types of ''blowdowns.''

Next, we are clarifying that we only intend to cover the types of blowdowns typically activated by operators, whether for what an operator might perceive as an emergency shutdown or when taking equipment out of service for operational or maintenance purposes. The term ''activated by operators'' implies that an operator was present at the time the blowdown was activated, and that the operator(s) manipulated automated or manual controls to isolate the equipment and open the blowdown valve(s). Whether the operator perceived this human intervention to isolate and blowdown equipment as stemming from a perceived emergency or routine operational or maintenance functions is unimportant because the operator has full knowledge of the timing and equipment being isolated and blown down to record for reporting purposes. It was not EPA's intent to capture automated releases that do not involve human intervention, such as pressure safety valve releases, pressure controlled venting, or compressors being automatically shut down for safety in the absence of operator presence or intervention. Such automated safety releases or equipment shutdowns may not have sufficient operator involvement to know the timing and exact nature of the gas release to make an accurate accounting.

Also in this action, we are revising the numbering of Equation W–14 to be Equation W–14A, and adding an Equation, W–14B. We are adding Equation W–14B to allow facilities to track blowdowns by each occurrence. Equation W–14B allows reporters to account for situations where a unique physical volume may not be blown down to atmospheric pressure.

For both equations, V_v has been changed to V. We are also clarifying that the parameter V is the actual physical volume of the blowdown equipment and not the gas volume. In both equations, the definition of parameter ''N'' has been changed to the number of times a particular unique physical volume is blowndown to the atmosphere. Finally, ''T_s'' has been set at 60 degrees Fahrenheit and ''P_s'' has been set at 14.7 psia.

Accordingly, revisions to 40 CFR 98.236(c)(7) were made to account for these amendments. We are revising the data reporting requirements for blowdown vent stacks by stating that emissions from unique volumes that are blowndown more than once during the calendar year must be reported by unique physical volume and the number of times that a particular volume is blowdown must be reported. For unique physical volumes that are blowndown only once during the calendar year, reporters can total the emission from all of the unique volumes and report an aggregate number. In addition, EPA added the requirement to report the number of unique volumes that are blowndown only once during the calendar year.

Onshore Production Storage Tanks. EPA is amending several provisions in 40 CFR 98.233(j) for calculating GHGs from onshore production storage tanks.

First, we are clarifying that the equipment threshold referenced throughout this section for onshore production storage tanks is based on an annual average daily throughput. This clarification was necessary to address ambiguity in the final rule regarding the determination of the throughput of oil.

Next, we are making corrections to address erroneous citations in 40 CFR 98.233(j)(1)(vii) and 40 CFR 98.233(j)(2).

Next, in this action, EPA is replacing the term ''field'' in 40 CFR 98.233(j)(1)(vii)(B), 40 CFR 98.233(j)(1)(vii)(C), and 40 CFR 98.233(j)(3)(i) with the term ''sub-basin category'' as per the discussion in Section II.C of the September 9, 2011 proposal preamble. EPA is also clarifying that reporting of CH_4 and CO_2 emissions determined using Calculation Methodologies 3 and 4 are on an annual basis.

We are revising Equation W–15 to include a multiplier of 1,000 that converts emissions from thousand standard cubic feet to standard cubic feet so the calculation results in accurate units. Also, we are amending the definitions of the parameters, EF_i and Count, to clarify that these parameters must be used for well-pad gas-liquid separators and for wells sending liquids straight to a tank without passing through any gas-liquid separators with throughput less than 10 barrels per day. Additionally, EPA is changing standard conditions to 60 degree Fahrenheit and 14.7 psia; therefore, the emission factors for CH_4 and CO_2 at 60 degrees Fahrenheit replaced the existing values at 68 degrees Fahrenheit.

Lastly, in Equation W–16, we are amending the definition for the parameter E_n by correcting the erroneous citations, 40 CFR 98.233(j)(3) and (j)(5), and including the accurate citations, 40 CFR 98.233(j)(1), (j)(2), and (j)(4), instead. We are including a conversion factor in this equation such that the emissions are being determined on a yearly basis, as opposed to an hourly basis. We are deleting the parameter E_t in the equation, because it is being accounted for in the revised equation and therefore is not necessary.

Accordingly, we are clarifying several data reporting requirements in 40 CFR 98.236(c)(8) for this source. First, for Calculation Methodologies 1 and 2. Next, for Calculation Methodologies 3, 4, and 5, vented, flared, and recovered emissions must be reported for each GHG and all requirements must be reported at a sub-basin level. Next, we are correcting an erroneous citation in 40 CFR 98.236(c)(8)(ii)(D). Finally, as proposed, EPA is adding the reporting of vented emissions for each gas at the sub-basin level for improperly functioning dump valves. This data reporting requirement is based on the inputs to Equation W–16 in 40 CFR 98.233(j) and therefore will not place additional burden on reporters.

Transmission Storage Tanks. EPA is amending several provisions in 40 CFR 98.233(k) for calculating GHGs from transmission storage tanks.

First, we are revising 40 CFR 98.233(k)(1) to include an additional provision for monitoring the transmission storage tank vapor vent stack. With this amendment, reporters can either screen their tanks first by using the optical gas imaging instrument for 5 continuous minutes and, if a leak is detected, measure the leak according to the provisions in 40 CFR 98.234 consistent with the 2010 final rule, or measure the tank vent vapors for 5

minutes either using a flow meter or high volume sampler, or alternatively a calibrated bag based on manufacturers specifications according to the provisions outlined in 40 CFR 98.234.

Next, EPA is clarifying that emissions, determined in 40 CFR 98.233(k)(2) and (k)(4), are on an annual basis. Next, in 40 CFR 98.233(k)(4)(i), we are deleting the erroneous citation to 40 CFR 98.233(j)(1). Lastly, in 40 CFR 98.233(k)(4)(ii), we are clarifying that flare stack calculation methodology from 40 CFR 98.233(n) should be used for emissions that are sent to a flare and not from the flare.

EPA is amending two associated data reporting requirements in 40 CFR 98.236(c)(9). We are clarifying that vented and flared emissions for each GHG, must be reported for each transmission storage tank. Additionally, we are finalizing the reporting of a unique name or ID number, as proposed, for each transmission storage tank as per the discussion in Section II.D of this preamble.

Well Testing Venting and Flaring. EPA is amending the calculation methodologies under this source to make them applicable to gas wells and to situations wherein production from a group of wells is routed through the same pipe. In particular, EPA is adding Equation W–17B which uses the production rate of a gas well to estimate well testing venting emissions from gas wells. Additionally, EPA is clarifying that both equations apply to one or more wells being tested.

EPA is amending the data reporting requirements in 40 CFR 98.236(c)(10), to clarify that for each GHG, reporters must report emissions from well testing venting and from well testing flaring separately. These emissions from well testing venting and well testing flaring are calculated individually in 40 CFR 98.233(l); therefore, this places no additional burden on reporters.

Associated Gas Venting and Flaring. EPA is revising 40 CFR 98.233(m)(1) to replace the term ''field'' with the term ''sub-basin category'' as per the discussion in Section II.C of the September 9, 2011, GHGRP Revisions Proposal.

EPA is amending the data reporting requirements in 40 CFR 98.236(c)(11), to clarify that for each GHG, reporters must report emissions from associated natural gas venting and from associated natural gas flaring separately. These emissions from associated natural gas venting and associated natural gas flaring are calculated separately in 40 CFR 98.233(m); therefore, this places no additional burden on reporters.

Flare Stack Emissions. EPA is amending several provisions in 40 CFR 98.233(n) for calculating GHGs from flare stacks.

First, we are amending 40 CFR 98.233(n)(2)(ii) to clarify that reporters of onshore natural gas processing plants that solely fractionate a liquid stream, must use the GHG mole percent in feed natural gas liquid for all streams. This amendment addresses the lack of clarity in the final provisions on how natural gas processing plants that only fractionate liquid streams would determine their gas compositions.

Next, we are revising 40 CFR 98.233(n)(2)(iii) to clarify that for any applicable industry segment, methane, in addition to ethane, propane, butane, pentane-plus and mixed light hydrocarbons, should be accounted for when the stream going to the flare is a hydrocarbon product stream. This correction ensures that the paragraph 40 CFR 98.233(n)(2)(iii) is consistent with the Equation W–21.

Next, we are clarifying the summation operator in Equation W–21 to make the equation mathematically correct. Additionally, we are clarifying, in 40 CFR 98.233(n)(11), that source types in 40 CFR 98.233 that send emissions to a flare and use Equations W–19 through W–21, must determine volumetric flow rate, parameter ''V_a'', in Equation W–19 through W–21, at actual conditions.

EPA did not intend to unnecessarily limit the measurement options for flares that operate and maintain a continuous emissions monitoring system (CEMS). EPA is now allowing the reporters to calculate CO_2 emissions from flares that operate and maintain a CEMS, using Tier 4 Calculation Methodology and all associated calculation, quality assurance, reporting, and recordkeeping requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources). This includes following the procedures for initial certification of the CEMS and the ongoing quality assurance requirements for the CEMS specified in 40 CFR 98.34(c). Also, EPA is exempting the reporting of CH_4 and N_2O emissions from flares that operate and maintain a CEMS.

EPA is making several amendments to the data reporting requirements in 40 CFR 98.236(c)(12). First, we are amending requirements to clarify that uncombusted CH_4 emissions, combusted CO_2 emissions, uncombusted CO_2 emissions, and combustion-related N_2O emissions must be reported separately. Second, we are adding the reporting of combined combusted and uncombusted CO_2 emissions from flares that operate and maintain a CEMS. These uncombusted CH_4, combusted CO_2, uncombusted CO_2, combustion-related N_2O emissions, and combined combusted and uncombusted CO_2 emissions from flares that operate and maintain a CEMS are calculated separately in 40 CFR 98.233(n); therefore, these requirements place no additional burden on reporters. Lastly, we are finalizing the reporting of a unique name or ID number, as proposed, for each flare stack under onshore natural gas processing as per the discussion in Section II.D of this preamble.

Centrifugal Compressor Venting. EPA is finalizing amendments that were made across the sections in 40 CFR 98.233 to standardize reporting for standard conditions. First, EPA is clarifying two parameter definitions under this source. First, in Equation W–24, we are amending the definition of parameter MT_m to clarify that flow measurements must be determined in standard cubic feet per hour. Second, EPA is changing standard conditions to 60 degrees Fahrenheit and 14.7 psia; therefore, in Equation W–25, the emission factors for GHG_i at 68 degrees Fahrenheit were removed from the parameter EF_i.

Reciprocating Compressor Venting. EPA is finalizing amendments that were made across the section in 40 CFR 98.233 to standardize reporting for standard conditions. First, EPA is clarifying two parameter definitions under this source. First, in Equation W–28, we are amending the definition of parameter MT_m to clarify that flow measurements must be determined in standard cubic feet per hour. Second, EPA is changing standard conditions to 60 degrees Fahrenheit and 14.7 psia; therefore, in Equation W–29, the emission factors for GHG_i at 68 degrees Fahrenheit were removed from the parameter EF_i.

Leak Detection and Leaker Emission Factors. We are revising 40 CFR 98.233(q)(8) to remove the term ''city gate stations at custody transfer'' and replace with the term ''transmission-distribution transfer stations'' for the reasons described in Section II.C of the September 9, 2011 GHGRP Revisions Proposal. We are also removing the term ''meters and regulators'' and replacing these terms with above ground ''metering-regulating stations''.

EPA is revising equation W–30A, previously designated at W–30A in the November 2010 final rule (75 FR 74458), to clarify the summation operator to make it mathematically correct. This clarification includes amending the term ''x'' to be the count of each equipment leak source as listed in Table

W–7 and adding T_p, which is the total time the component p was found leaking and operational. We are also revising the parameter GHG_i. For industry segments listed in 40 CFR 98.230(a)(4) and (a)(5), GHG_i has been revised to 0.974 for CH4 and 1.0×10^{-2} for CO_2. For industry segments listed in 40 CFR 98.230(a)(6) and (a)(7), GHG_i equals 1 for CH_4 and 0 for CO_2. For industry segments listed in 40 CFR 98.230(a)(8), GHG_i equals 1 for CH_4 and 1.1×10^{-2} CO_2.

EPA is adding the option in 98.233(q)(8)(A) for natural gas distribution facilities to conduct monitoring at their transmission-distribution transfer stations over a multiple year period, not exceeding five years. For more information on the comments received and EPA's response to this topic see Section II.D Responses to Major Comments submitted on the *Petroleum and Natural Gas Systems Source Category* of this preamble. Facilities that choose to use the multiple year option are required to conduct monitoring at roughly the same number of T–D stations over the cycle without repetition of the same T–D stations within the cycle.

EPA is also adding a new Equation W–30B to account for emissions from leaking sources at above ground T–D transfer stations when the facility chooses to conduct monitoring at T–D transfer stations over a multiple year cycle. Equation W–30B maintains a rolling sum of emissions from T–D transfer stations that have been monitored over the multiple years in the cycle and results in a rolling average in Equation W–32 for each meter/regulator run. EPA has also added three terms t, n, and $T_{p,q}$ that are in Equation W–30B. The term t defines the calendar year, n defines the number of years in the cycle over which all T–D transfer stations will be monitored, and $T_{p,q}$ defines the total time the leak source p was found leaking and operational in the multiple year cycle. Finally, EPA has clarified that Equation W–30A applies to facilities listed in 40 CFR 98.230(a)(3)–(a)(7) and Equation W–30B applies to facilities listed in 40 CFR 98.230(a)(8).

We are amending the data reporting requirements associated with the changes to 40 CFR 98.233(q) and (r) in 40 CFR 98.236(c)(16). We are revising the requirements based on the revisions to the data calculation methodologies for Local Distribution Companies that choose to use the 5-year rolling survey plan. These revisions include provisions for facilities to report the total number of T–D stations at their facility, the number of years over which all T–D transfer stations will be monitored at least once, and the number of T–D stations that are being monitored in the calendar year. We are also amending the reporting requirements in 40 CFR 98.236(c)(16) to clarify that facilities must report CH_4 emissions collectively by emission source type and CO_2 emissions collectively by emission source type.

Population Count and Emission Factors. We are finalizing several amendments in 40 CFR 98.233(r). First we are amending the definition of EF_s in equation W–31 by replacing the term ''non-custody transfer city-gate'' with ''meter/regulator runs'' at above grade ''metering-regulating stations'' for the reason stated in Section II.C of the September 9, 2011 proposal. We are also clarifying that the count in equation W–31 applies to the number of ''meter/regulator runs'' at all ''metering-regulating stations'' combined.

We are also amending the term ''count'' in W–31 to elaborate and clarify how each industry segment should count the total number of equipment/components. In that same equation, for industry segments listed in 40 CFR 98.230 (a)(4) and (a)(5), we are revising GHG_i to 0.952 for CH_4 and 1.0×10^{-2} for CO_2. For industry segments listed in 40 CFR 98.230(a)(6) and (a)(7), GHG_i equals 1 for CH_4 and 0 for CO_2. For industry segments listed in (a)(8), GHG_i equals 1 for CH_4 and 1.1×10^{-2} CO_2.

Next, EPA is amending 40 CFR 98.233(r)(2)(i) to explicitly state how meters and piping are to be counted. Based on this amendment, owners or operators should use one count of meters/piping per well-pad.

Further, EPA is amending 40 CFR 98.233(r)(6)(i) by replacing the term ''below grade meters and regulators'' with the term, ''below grade metering-regulation stations''. EPA is also amending 40 CFR 98.233(r)(6)(ii) by referring to ''metering-regulating stations'' in place of ''city gate'' and to clarify that the emission factor for meter/regulator runs at all metering-regulating stations in Equation W–32 is based on ''transmission-distribution transfer stations'' that were monitored over the years that constitute one complete cycle per 40 CFR 98.233(q)(8)(A).

Lastly, we are revising Equation W–32 by revising definitions to EF, $E_{s,i}$, and ''Count'' to reflect the change in terminology from ''custody transfer'' for above ground ''metering-regulating'' stations. We are also revising Equation W–32 to include a conversion factor to convert to hourly emissions. Also, equation W–32 is amended in 40 CFR 98.233(r) so that the equation yields an EF in cubic feet per meter per hour to be used in Equation W–31 for above ground metering-regulating stations. Finally, the summation operator has been removed in Equation W–32 because $E_{s,i}$ represents annual volumetric GHG_i emissions at all T–D transfer stations, making the summation operator redundant.

Volumetric Emissions. We are amending several provisions in 40 CFR 98.233(t). First, we are clarifying that reporters must calculate natural gas volumetric emissions at standard conditions by converting natural gas volumetric emissions at actual temperature and pressure to standard temperature and pressure. Next, the phrase ''by converting actual temperature and pressure of natural gas emissions to standard temperature and pressure of natural gas'' in 40 CFR 98.233(t)(2) was deleted because of redundancy. Next, EPA has changed standard condition to 60 degrees Fahrenheit and 14.7 psia; therefore, in Equations W–33 and W–34, EPA is including these standard temperature and pressure values for T_s and P_s. Lastly, EPA is providing a ratio of 519.67/527.67 to convert volumetric emissions from 68 °F to 60 °F for reporters using 68 degrees Fahrenheit for standard temperature.

GHG Volumetric Emissions. We are amending several provisions in 40 CFR 98.233(u). First, we are clarifying that reporters may determine the mole fraction of GHGs in natural gas by engineering estimate based on best available data unless EPA is requiring another method. Next, we are clarifying that when using a continuous gas composition analyzer, reporters must use an annual average of the values to determine the GHG mole fraction in produced natural gas. In addition, when reporters are not using a continuous gas composition analyzer, reporters must use an annual average gas composition based on the reporter's most recent available sample analysis of the sub-basin category or facility, depending on the emission source, instead of the actual most recent gas composition based on available analysis in a sub-basin entity.

Next, we are amending 40 CFR 98.233(u)(2)(ii) to clarify that reporters of onshore natural gas processing plants that solely fractionate a liquid stream, must use the GHG mole percent in feed natural gas liquid for all streams. This amendment addresses the lack of clarity in the final provisions on how natural gas processing plants that only fractionate liquid streams would determine their gas compositions.

We are amending 40 CFR 98.233(u)(2)(iii) through (u)(2)(vii), to include 95 percent methane/1 percent CO_2 default gas composition for the natural gas transmission compression, underground natural gas storage, LNG storage, and natural gas distribution industry segments and for LNG export facilities that receive gas from transmission pipelines unless specified otherwise in the Calculations for GHGs sections. Lastly, we are replacing the term ''field'' with the term ''sub-basin category'' as per the discussion in Section II.C of the September 9, 2011.

GHG Mass Emissions. We are amending several provisions in 40 CFR 98.233(v). First, we are removing the phrase ''at standard conditions'' from the introductory text and the subscript ''s,'' and the word ''standard'' from the definition of parameter $Mass_{s,i}$ because mass emissions do not need to be reported at standard conditions. Next, we are revising the definitions of parameters in Equation W–36 to clarify that the equation also applies to N_2O emissions. N_2O emissions are calculated from stationary combustion and flares, and this edit is needed to convert the mass emissions of N_2O to carbon dioxide equivalents of gas. Lastly, EPA has changed standard conditions to 60 degree Fahrenheit and 14.7 psia; therefore, the density values for CH_4, CO_2, and N_2O at 68 degrees Fahrenheit were removed from the parameter ρ_i.

EOR injection pump blowdown. We are amending two parameters in Equation W–37. First, we are removing the subscript ''c'' from the parameter $Mass_{c,i}$ and the phrase ''at critical conditions'' from the definition of parameter $Mass_{c,i}$ because mass emissions do not need to be reported at critical conditions. Second, we are amending the parameter GHG_i and $Mass_{c,i}$, to read GHG_{CO2} and $Mass_{s,CO_2}$, to clarify that Equation W–37 only calculates CO_2 emissions.

EPA is clarifying the data reporting requirements in 40 CFR 98.236(c)(17) to state that annual emissions for each GHG, must be reported for each EOR pump.

EOR hydrocarbon liquids dissolved CO_2. We are amending the parameter $Mass_{s,CO_2}$ by removing the subscript ''s'' and the phrase ''at standard conditions'' from the definition of parameter $Mass_{s,CO_2}$ because mass emissions do not need to be reported at standard conditions.

EPA is clarifying the data reporting requirements in 40 CFR 98.236(c)(18) to state that all parameters, including annual CO_2 emissions, must be at a sub-basin level.

Onshore Production and Distribution Combustion Emissions. EPA is making several amendments to the provisions in 40 CFR 98.233(z).

First, we are clarifying that Calculation Methodologies in 40 CFR 98.233(z)(1) and (z)(2) apply to all stationary or portable equipment except external fuel combustion sources with a rated heat capacity equal to or less than 5 mmBtu/hr. In addition, 40 CFR 98.233(z)(1) and (z)(2) apply to all internal fuel combustion sources, with a rated heat capacity equal to or less than 1 mmBtu/hr (not compressor-drivers). EPA is clarifying that for units below the 5 mmBtu/hr and 1 mmBTU/hr threshold, outlined in 40 CFR 98.233(z)(3) and (z)(4), reporters do not need to report combustion emissions or include these emissions for threshold determination in 40 CFR 98.231(a). Instead, reporters must report the type and number of each external fuel combustion unit and each internal fuel combustion unit below the equipment threshold.

EPA is clarifying when owners or operators of onshore production and distribution facilities must use the methods in 40 CFR subpart C to calculate combustion-related emissions and when they must use methods outlined in 40 CFR 98.233(z) to calculate combustion-related emissions. EPA is clarifying that facilities using subpart C to calculate emissions can use any Tier listed in subpart C. Regardless of the Tier used, facilities must follow the corresponding calculation, quality assurance, reporting, and recordkeeping requirements of that Tier.

EPA is amending the requirements for units combusting field gas, process vent gas, a blend containing field gas or process vent gas, or natural gas that is not of pipeline quality or that has a high heat value of less than 950 Btu per standard cubic feet. In this action, EPA is allowing the use of company records for the purposes of calibration for this equipment.

Next, EPA is including an engineering equation, W–39B, to determine the annual CH_4 emissions from portable or stationary fuel combustion sources. We are also clarifying the summation operator to make the existing equation, W–39A that calculates annual CO_2 emissions from portable or stationary fuel combustion sources, mathematically accurate. Additionally, we are also including a combustion efficiency parameter in Equation W–39A.

We are making several amendments to Equation W–40. First, we are changing the parameter N_2O to $Mass_{N2O}$ because this equation calculates the annual N_2O mass emissions from the combustion of a particular type of fuel. Second, we are amending an incorrect exponent to account for the conversion factor from kilograms to metric tons. Lastly, we are providing actual values in the definition of parameter HHV in Equation W–40.

Accordingly, EPA is amending the data reporting requirements in 40 CFR 98.236(c)(19) for external fuel combustion sources with a rated heat capacity greater than 5 mmBtu/hr, and internal fuel combustion sources (excluding a compressor-driver), with a rated heat capacity equal to or less than 1 mmBtu/hr, and internal fuel combustion sources. First, we are clarifying that for external fuel combustion sources with a rated heat capacity larger than 5mmBtu/hr, the emissions for each GHG must be reported by type of unit. Second, we are clarifying that for internal fuel combustion sources, with a rated heat capacity equal to or less than 1 mmBtu/hr (excluding a compressor-driver), only the cumulative number of units must be reported by type of unit. Lastly, we are clarifying that for internal fuel combustion units, the emissions for each GHG must be reported by type of unit.

Monitoring and QA/QC Requirements. We are finalizing several amendments to the monitoring and QA/QC requirements in 40 CFR 98.234.

First, we are amending the language in 40 CFR 98.234(a)(1) by removing and reserving the text in 40 CFR 98.234(a)(4) and combining it with 40 CFR 98.234(a)(1), thus resulting in one consolidated paragraph for optical gas imaging instrument provisions. We are also explicitly stating exceptions to the requirement under the Alternative work practice for monitoring equipment leaks. Those exceptions are (1) the monitoring frequency is annual and (2) the detection sensitivity is 60 grams per hour. In addition, EPA is requiring that the gas chosen during the instrument check must be methane. Finally, EPA is clarifying that video recordings are not required to be retained for the purposes of 40 CFR part 98, subpart W.

Next, we are amending the language in 40 CFR 98.234(a)(2) to state that Method 21 compliant instruments may be used to monitor inaccessible emissions sources. It is not EPA's intent here to require reporters to use unsafe methods to reach inaccessible emission sources using Method 21 compliant equipment. Rather EPA is allowing the use of Method 21 compliant leak detection equipment where the reporter can access inaccessible sources using safe options, such as the use of a bucket truck. EPA still requires the use of

optical imaging cameras to reach inaccessible emission sources where the reporter cannot use Method 21 compliant leak detection equipment safely. EPA allows the use of method 21 for all source types, although an optical gas imaging instrument must be used in cases where a reporter deems a source type inaccessible. EPA expects the reporters will use an optical gas imaging instrument in order to ensure safety when monitoring inaccessible source types. Lastly, based on questions raised by industry, we are clarifying in 40 CFR 98.234(a)(5) the type of acoustic leak detection devices that may be used. In particular the ''gun'' type instrument, which is aimed at the equipment from a distance to detect the acoustic signal of leakage, is not an allowable instrument under this rule. This type of equipment cannot distinguish between external leakage to the atmosphere and internal, through-valve leakage, which acoustic leak detection devices are used for under this rule. EPA is also further specifying that the ''stethoscope'' type acoustic detector that senses through valve leakage when put in contact with the valve body, but does not have the leakage estimating correlations, is permissible for leak detection only under this rule.

We are including an editorial revision in 40 CFR 98.234(c) for calibrated bagging to specify that those using the calibrated bag for sampling, must ensure that the emissions are at a temperature below which the bag manufacturer specifies for safe handling. EPA is also clarifying in 40 CFR 98.234(d)(3) that emission volumes determined using the high volume sampler can be converted to standard conditions using 40 CFR 98.233(t). Finally, we are revising Equation W–41 to insert missing variables ''a'' and ''b'' from the Peng Robinson equation.

Data Reporting Requirements. The amendments to the reporting requirements for various emission source types are discussed under the corresponding emission source paragraphs in this section of the preamble. Additionally, EPA is making the following amendments to the general reporting requirements in 40 CFR 98.236.

First, we are amending 40 CFR 98.236(b) to clarify that facilities reporting under the offshore petroleum and natural gas production industry segment must report emissions for each GHG, as applicable to the source type, for each emissions source type listed in the most recent Bureau of Ocean Energy Management and Regulatory Enforcement (BOEMRE) study.

Next, we are clarifying that if a facility operates under more than one industry segment, reporters must report the data from each piece of equipment under the industry segment in which the equipment is most used. Additionally, we are clarifying that if a source type routes gas to a flare, reporters must report vented and flared emissions separately for each gas. These vented and flared emissions must be reported under the respective source type and not under the flare stack source type.

Finally, EPA is including the reporting of average API gravity of the hydrocarbon liquids produced, average gas to oil ratio, and average low pressure separator pressure per oil sub-basin category for onshore production reporters.

Records that must be retained. EPA is clarifying that records that must be retained under 40 CFR 98.3(g)(2)(i) of the general provisions must include an explanation of how company records, engineering estimation, or best available information are used to calculate each applicable parameter under this subpart. This requirement is already included in 40 CFR 98.3(g)(2)(i) and including this requirement in Subpart W provides further clarity on the records facilities are required to keep.

Definitions. EPA is amending several definitions in 40 CFR 98.238, and in some cases, adding and removing definitions in 40 CFR 98.238.

Associated With a Single Well-Pad. We are including a definition for ''associated with a single well-pad'' to clearly demarcate the extent of the boundary of onshore production facilities. This definition more clearly expresses EPA's intent that the association be defined by the hydrocarbon stream from one or more wells located on a single well-pad. Where the point of combination is located off that single well-pad, the association with a single well-pad ends where the stream from a single well-pad is combined with streams from one or more additional single well-pads. Storage tanks located on a well pad are considered part of the onshore production industry segment.

Distribution Pipeline. We are adding a definition for distribution pipelines to clarify our intent for coverage for the natural gas distribution industry segment.

Facility With Respect to Natural Gas Distribution. We are revising the definition for facility with respect to natural gas distribution by replacing the term ''metering stations, and regulating'' with the term ''metering-regulating'' and by clarifying that the collection of all distribution pipelines and metering-regulating stations operated by an LDC within a single state must be included.

Facility With Respect to Onshore Petroleum and Natural Gas Production. We are revising the definition for facility with respect to onshore production by clarifying that it includes all petroleum or natural gas equipment on a single well-pad or associated with a single well-pad and CO_2 EOR operations that are under common ownership or common control including leased, rented, or contracted activities by an onshore petroleum and natural gas production owner or operator and that are located in a single hydrocarbon basin as defined in § 98.238.

Farm Taps. We are revising the definition for farm taps in 40 CFR 98.238 by removing the statement ''[t]he gas may or may not be metered, but always does not pass through a city gate station'' as this statement is unnecessary.

Flare. We are adding a definition of flare, specific to subpart W, to address questions received during implementation of the 2010 final rule about what constitutes a flare. This definition clarifies that a flare may be either at ground level or elevated and that a flare may use an open or enclosed flame to combust waste gases without energy recovery. The intent of this definition is to include devices that combust waste gases without energy recovery.

Forced Extraction of Natural Gas Liquids. We are adding a definition for forced extraction, as proposed, to limit the use of forced extraction to specific processes. With this definition, EPA is clarifying that ''forced extraction of natural gas liquids'' means removal of ethane or higher carbon number hydrocarbons existing in the vapor phase in natural gas, by removing ethane or heavier hydrocarbons derived from natural gas into natural gas liquids by means of a forced extraction process. Forced extraction processes include but are not limited to refrigeration, absorption (lean oil), cryogenic expander, and combinations of these processes.

Gas Well. We are removing the definition of gas well from 40 CFR 98.238. Gas wells are defined within the revised definition of sub-basin category.

Horizontal Well. We are including a definition for horizontal well in conjunction with the change from field level reporting to sub-basin category. With this definition, we are stating that a horizontal well means a well bore that has a planned deviation from primarily vertical to a primarily horizontal inclination or declination tracking in

parallel with and through the target formation.

Metering-regulating Station. We are adding this definition to clarify that metering-regulating stations are stations that meter the flowrate, regulate the pressure, or both, of natural gas in a natural gas distribution facility. These do not include customer meters, customer regulators, or farm taps.

Natural Gas. We are adding this definition, as proposed, to clarify that natural gas means a naturally occurring mixture or process derivative of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface, of which its constituents include, but are not limited to, methane, heavier hydrocarbons and carbon dioxide. Additionally, we are clarifying that natural gas may be field quality, pipeline quality, or process gas.

Oil Well. We are removing the definition for oil well from 40 CFR 98.238. Oil wells are defined within the revised definition of sub-basin category.

Pressure Groups. We are adding a definition of pressure groups, as proposed, as applicable to each sub-basin to clarify that pressure groups are: Less than or equal to 25 psig; greater than 25 psig and less than or equal to 60 psig; greater than 60 psig and less than or equal to 110 psig; greater than 110 psig and less than or equal to 200 psig; and greater than 200 psig. The pressure in the context of pressure groups is either the well shut-in pressure; well casing pressure; or you may use the casing-to-tubing pressure of one well from the same sub-basin multiplied by the tubing pressure for each well in the sub-basin.

Sub-Basin Category. We are including a definition for a sub-basin category in conjunction with the change in measurement from field to sub-basin level. Based on this definition, a sub-basin means a subdivision of a basin into the unique combination of wells with the surface coordinates within the boundaries of an individual county and subsurface completion in one or more of each of the following five formation types: Oil, high permeability gas, shale gas, coal seam, or other tight reservoir rock. The distinction between high permeability gas and tight gas reservoirs shall be designated as follows: High permeability gas reservoirs with >0.1 millidarci permeability, and tight gas reservoirs with ≤0.1 millidarci permeability. Permeability for a reservoir type shall be determined by engineering estimate. Wells that produce from high permeability gas, shale gas, coal seam, or other tight reservoir rock are considered gas wells; gas wells producing from more than one of these formation types shall be classified into only one type based on the formation with the most contribution to production as determined by engineering knowledge. All wells that produce hydrocarbon liquids and do not meet the definition of a gas well in this sub-basin category definition are considered to be in the oil formation. All emission sources that handle condensate from gas wells in high permeability gas, shale gas, or tight reservoir rock formations are considered to be in the formation that the gas well belongs to and not in the oil formation.

Transmission-Distribution (TD) Transfer Station. As proposed, EPA is adding a definition for Transmission Distribution (TD) transfer station to define what was previously termed ''custody transfer'' in the final rule. This definition was necessary to further clarify EPA's intent, which was not for the term ''custody transfer'' to be defined in the context of ownership of gas transfer. The TD transfer station means a meter-regulating station where a local distribution company takes part or all of the natural gas from a transmission pipeline and puts it into a distribution pipeline.

Transmission Pipeline. We are finalizing a definition as proposed for transmission pipeline to clarify that transmission pipelines are clearly designated as such by the Federal Energy Regulatory Commission for interstate transmission pipelines, individual States for intrastate transmission pipelines, and the Hinshaw exemption under the Natural Gas Act for Hinshaw transmission pipelines.

Tubing diameter groups. We are finalizing a definition for tubing diameter groups, as proposed, to clarify that tubing diameter groups are: less than or equal to 1 inch; greater than 1 inch and less than 2 inch; and greater than or equal to 2 inch.

Tubing systems. We are finalizing a definition of tubing systems, as proposed, to clarify that tubing systems means piping equal to or less than one half inch diameter as per nominal pipe size.

Vertical Well. We are finalizing a definition for vertical wells, as proposed, to coincide with the change from field level reporting to sub-basin category, EPA is adding a distinction for calculating emissions from horizontal wells and vertical wells. With this definition, a vertical well means a well bore that is primarily vertical but might have some unintentional deviation or one or more intentional deviations to enter one or more subsurface targets that are off-set horizontally from the surface location, intercepting the targets either vertically or at an angle.

Well Testing Venting and Flaring. We are finalizing, as proposed, a definition for well testing venting and flaring. This definition says that well testing venting and flaring means venting and/or flaring of natural gas at the time the production rate of a well is determined (*i.e.*, the well testing) through a choke (an orifice restriction). Based on this revised definition, if well testing is conducted immediately after well completion or workover then it would be considered part of a completion or workover.

Emission Factor Tables. We are amending several emission factors in subpart W in response to comments requesting that the emission factors be adjusted to reflect a consistent standard temperature and pressure used for calculation methodologies in 40 CFR 98.233. Specifically, we are revising all of the entries to 60 degrees Fahrenheit for Tables W–1A and W–2 through W–6 and revising the entries for ''Low Continuous Bleed Pneumatic Device Vents'', ''High Continuous Bleed Pneumatic Device Vents'', and ''Intermittent Bleed Pneumatic Device Vents'' to whole gas emission factors in Table W–1A. Additionally, we are revising the entries for ''Leaker Emission Factors—Transmission-Distribution Transfer Station Components, Gas Service,'' ''Population Emission Factors—Below Grade Metering-Regulating Station Components, Gas Service,'' ''Population Emission Factors—Distribution Mains, Gas Service,'' and ''Population Emission Factors—Distribution Mains, Gas Service'' to 60 degrees Fahrenheit.

D. Responses to Major Comments Submitted on the Petroleum and Natural Gas Systems Source Category

This section contains a brief summary of major comments and responses on the proposed amendments to subpart W published in GHGRP Corrections Proposal and the GHGRP Revisions Proposal. Responses to additional comments received on those proposals can be found in the document, ''Mandatory Reporting of Greenhouse Gases—Technical Revisions to the Petroleum and Natural Gas Systems Category of the Greenhouse Gas Reporting Rule: EPA's Response to Public Comments'' see docket EPA–HQ–OAR–2011–0512.

1. Pressure groupings

Comment: EPA received comments requesting two pressure ranges for calculating emissions from liquids unloading of gas wells in 40 CFR 98.233(f) as opposed to the September 9,

2011 proposal, which proposed five pressure ranges, four bounded ranges between 0–200 psig and one unbounded range above 200 psig, for this source. Commenters also requested clarification as to whether the proposed pressure ranges would apply across the sub-basin, including both conventional and unconventional wells. Finally, commenters were unclear as to what pressure types were to be used for the pressure groupings, and requested clarification as to whether the groupings were based on surface pressure or a different type of pressure.

Response: In response to the commenters first point, EPA has concluded that the five pressure ranges finalized in this action are appropriate for methodology 1 of 40 CFR 98.233(f). Greenhouse gas emissions resulting from well liquids unloading, regardless of what type of reservoir or gas well is involved, must be reported in the pressure range based on shut-in pressure as defined in 40 CFR 98.238 *Definitions,* Pressure Group. To avoid confusion, EPA is discontinuing the use of the terms ''conventional'' and ''unconventional'' because these terms have different meanings within the industry. The volume of gas released during an unloading is directly related to the wellhead pressure. EPA analyzed different numbers of pressure groupings and selected the optimal number of pressure groupings that resulted in minimal error while managing burden. In this action, reporters are to estimate emissions from one well with a unique tubing diameter grouping and pressure grouping combination in a sub-basin, and apply that value to all wells with that tubing diameter grouping and pressure grouping in that same sub-basin.

Please refer to the Pressure Analysis document in EPA–HQ–OAR–2011–0512–0016 for background on the analysis. EPA evaluated several different pressure groupings and their appropriateness to this emissions source, including the option suggested by the commenter, of two pressure groupings. Based on EPA's analysis documented in the memo to the docket, industry's suggestion of using only two pressure groupings would not provide the sufficient amount of accuracy in characterizing similar wells in the same sub-basin. Based on the five pressure groupings, EPA estimates that the minimum error would be about 30 percent from all wells that would report. However, if the number of ranges were reduced to 2 pressure groupings then the minimum error that would result from all wells is about 65 percent. These error estimates are based on theoretical calculations, not accounting for error in meter reading and human error. Given the large error in the two pressure grouping scenario, EPA has determined that a 5 pressure grouping is the optimal for balancing burden to monitor versus the quality of data required to inform policy.

To address the commenter's question about whether or not the five pressure groupings would apply to emission sources other than the liquids unloading emission source, EPA believes that final the provisions provide sufficient clarification. In particular, EPA has clarified in 40 CFR 98.233(f) that the five pressure groupings apply to the liquids unloading emissions source only. Furthermore, EPA has added a definition for pressure groupings in 40 CFR 98.238 to explicitly state what those pressure groupings apply to the liquids unloading emission source. Pressure groupings apply only to gas wells for liquids unloading as specified in 40 CFR 98.233(f), and do not apply to the oil sub-basin formation.

Finally, in response to the commenters' request for clarity as to what types of pressures are used in the pressure grouping, EPA has finalized a definition for pressure groupings that clarifies that the well shut-in pressure just before liquids unloading, well casing pressure just before liquids unloading, or casing to tubing pressure of one well just before liquids unloading from the same sub-basin can be used for the pressure groupings.

2. Data Reporting Requirements of 40 CFR 98.236(e)

Comment: EPA received comments on data reporting requirements for sub-basins in 40 CFR 98.236(e), specifically that API gravity, average gas to oil ratio and average low pressure separator pressure are not available or appropriate for applications to each of the sub-basin categories. The commenters assert for example, that dry gas production areas, such as coal-bed methane, will not have API gravity or gas to oil ratios to report for a sub-basin. Commenters further noted that this reporting requirement is applicable only to an oil production sub-basin category.

Response: EPA agrees and has amended 40 CFR 98.236(e) to clearly indicate that only onshore petroleum and natural gas production reporters must report the average API gravity of their hydrocarbon liquids produced and the average gas to oil ratio per the oil formation sub-basin entity as defined in 40 CFR 98.238.

In September 2011, EPA proposed additional data reporting requirements for onshore petroleum and natural gas production reporters to report the average API gravity of the hydrocarbon liquids produced, average gas to oil ratio, and average low pressure separator pressure per sub-basin entity. With the exception of the low pressure separator pressure, this information is already known to operators. In order to pay royalties and taxes, producers routinely conduct analyses on their produced crude oil to determine the gas to oil ratio and API gravity. Therefore, EPA has determined that this requirement would impose no additional burden on the industry.

3. Unique Name or ID Reporting Requirements

Comment: Several commenters representing the transmission compression industry segment noted that the proposed requirement to report unique ID's for the transmission storage tank source type would not provide meaningful information and that the requirement was inappropriate because it did not apply to the monitored source. Furthermore, these commenters noted that in some cases, multiple tanks are linked to a single vent, and having a requirement to report a unique ID for each tank would not be useful, since the vent, not the tank, is the monitored source. These commenters stated that this requirement should be removed from the final rule.

Response: EPA agrees with the commenters, in part, and has revised the data reporting requirements for the transmission storage tank emissions source in 40 CFR 98.236 to more appropriately track the emissions at the vent and not the tank. In this action, 40 CFR 98.236(c)(9)(iii) has been clarified to state that a unique name or ID shall be assigned to the vent line.

To meet the requirements of the 2010 final rule, which require reporting for each tank, owners and operators need to have a mechanism for tracking emissions from each storage tank. Further, to meet the reporting requirements, and requirements for resubmission of an annual GHG report in the event that EPA or the facility owner or operator identifies a substantive error (see 40 CFR 98.3(h)), owners and operators need to have a mechanism to assign the emissions they reported from an individual tank to the entry that they include in the electronic GHG Reporting tool (e-GGRT) for that same tank. For this reason, EPA has determined that the assignment of a unique ID is not new, nor does it introduce any new requirement that was not already required by the 2010 final rule. Rather this addition is providing clarification of the existing reporting

requirements. Therefore, in this action, EPA is finalizing the requirement to report a unique name or ID number for vents in transmission storage tanks in 40 CFR 98.236(c)(9), as well as glycol dehydrators in the natural gas processing industry segment in 40 CFR 98.236(c)(4), acid gas removal vents in the natural gas processing industry segment in 40 CFR 98.236(c)(3), and flare stacks in the onshore natural gas processing industry segment in 40 CFR 98.236(c)(12). EPA is also finalizing the requirement to report the unique name or ID for the unique physical volume for blowdowns in 40 CFR 98.236(c)(7) for transmission compression, gas processing, and LNG import and export industry segments.

To address the commenters comment that the unique name or ID is unnecessary for the transmission storage tanks emission source, EPA believes that this information is critical and has finalized this provision for other emissions sources including the flare emissions source and for unique blowdown physical volumes. In addition, EPA believes that these particular emission sources are not mobile and are generally stationary at a given facility. For example, for a source such as transmission storage tanks, the unique ID would inform EPA on where emissions are occurring, and over a time period of several years, would inform the Agency of the emissions trends associated with that particular emissions source at the facility.

Comment: EPA received comment specific to the reporting of a unique name or ID for the gas to liquid separators in the onshore production industry segment. Commenters noted that the proposed requirements to report unique ID will have no impact on the current emissions inputs or data quality, and are contradictory to industry's efforts to work with EPA to complete an accurate GHG inventory within a manageable reporting burden and resources. Additionally, the commenter asserted that creating unique equipment identifiers neither adds to the level of accuracy of calculated emissions, nor does it provide information that is not already available through the currently reported individual equipment counts and reported CO_2 and CH_4 emissions totals that are already part of the GHGRP. In onshore production, the commenter contends that the identifier data requested by EPA will not be usable at the individual equipment level due to the dynamic nature of the sector and the fact that the identifiers may be tied to well names or locations and hence be different every year due to frequent equipment movement, change-outs and replacements that routinely occur at oil and gas well sites.

Response: EPA agrees that for the onshore production segment, a unique name or ID number may be difficult to assign for portable equipment that may move from one location to another.

EPA initially proposed data reporting requirements of unique name or ID number in the onshore production industry segment for the following emission sources; acid gas removal units, glycol dehydrators, wellhead separators or storage tanks, flare stacks, and EOR injection pumps. However, after evaluating the comments received, EPA believes that reporting of these particular emission sources in the onshore production industry segment, which has a definition of facility at the basin level, would be sufficient without a unique name or ID, although some information to track emissions from specific pieces of equipment over time could be lost, because the data will ultimately be reported at the facility level. EPA agrees with the commenter that tracking of a particular emission source that may be moved from one site to the next may pose a problem to certain reporters who would find it difficult to track an emission source to this level. Onshore producers may often replace equipment in a process with other equipment either for maintenance purposes or to size the equipment as the well production rate varies over time. Given these issues that are unique to onshore production segment, therefore EPA is not requiring unique name or ID number in onshore production. EPA recognizes that removing this requirement for onshore production could potentially result in the loss of equipment-specific information that could be useful for future policy analysis and we may continue to evaluate this for future rulemakings.

4. Transmission-Distribution Transfer Station Reporting

Comment: Commenters generally agreed with the proposed definition for transmission-distribution transfer station proposed in the GHGRP Revisions Proposal. However, commenters stated that the proposed definition for transmission-distribution transfer station would require many more stations to be included in the leak detection survey requirement, and that it would be an unreasonable burden. In addition, commenters noted that the stations that would be surveyed are small and remote stations and this would lead to an added burden to survey for leaks. Finally, commenters urged EPA to adopt a threshold to exclude small stations from monitoring for GHG emissions. One commenter, specifically noted that one of their member companies completed surveys of 162 stations in 2011, and out of 32,400 components measured, only 18 leaking components were found. The commenter noted that they surveyed their members in October 2011 and received responses from 42 larger member LDCs. Of those 42 LDCs, that the commenter stated that a total of 20,781 stations would appear to fall within the final definition for transmission-distribution stations. One commenter specifically suggested having a percentage of the stations report and using that percentage to forecast emissions for the other stations. Further, several other commenters suggested using a threshold to reduce the number of leak surveys required.

Response: EPA notes that the number of reporters (*i.e.*, LDCs) that EPA estimated would be reporting under the natural gas distribution industry segment under subpart W has not changed. Because this industry segment has a high level of uncertainty in the context of knowing the exact number of stations that would be covered under the rule, EPA would like to note that based on the limited information submitted by the commenter, it could be a possibility that the number of stations covered under the subpart W rule (75 FR 74458) between the 2010 final rule and what is being finalized in this action may have increased. It was not EPA's intent to increase the number of surveys required. Therefore, after considering the two suggestions by commenters, EPA is finalizing an option that would allow facilities to conduct a leak detection survey once in any five consecutive calendar years for each station. EPA added the five consecutive year leak detection period to potentially coincide with reporters' existing inspection requirement under DOT regulations. Therefore, the annual burden to reporters will not increase as a result of this revision. See Transmission-Distribution Transfer Station docket memo in docket #EPA–HQ–OAR–2011–0512.

In this action, EPA is amending 40 CFR 98.233(q)(8) by allowing each above grade transmission-distribution transfer station the option to conduct a leak detection survey at least once in any five consecutive calendar years, with a minimum of 20 percent of their total number of stations being leak surveyed annually. Reporters choosing to use this option would use a five-year rolling average of their transmission-distribution transfer station leaking component counts to calculate emissions. In accordance with the

calculation requirements, these reporters would also define in their monitoring plan how the annual leak surveys represent cross sections of the total number of stations.

Furthermore, EPA evaluated Department of Transportation (DOT) regulations for comparison in the context of monitoring frequency. As provided in the November 2010 docket memorandum ''Understanding the Substance of DOT Regulations and Comparing Them to the Subpart W Requirements,'' DOT requires leak detection surveys annually for more populated areas and every five years for less populated locations. Although the DOT regulations covering various stations are not duplicative of EPA regulations under the Greenhouse Gas Reporting Program, providing the option to align the survey frequencies for both requirements may reduce burden for some reporters. EPA added the five consecutive year leak detection period to potentially coincide with reporters' leak inspection requirement under DOT regulations in order to give reporters the opportunity to fulfill Subpart W requirements during the regular DOT survey or maintenance visit.

In response to the commenters' assertion that the final definition for transmission-distribution transfer stations disproportionately covers stations that are small and remote, and in response to the commenters' suggestion to implement a threshold by which small stations would be exempt from being surveyed for leaks, EPA disagrees that the size of the station should impact whether leaks are surveyed because small stations in remote locations are potentially large sources of emissions, for example, due to aging equipment and or potentially infrequent operator maintenance.

DOT regulations focus on public safety, and as such facilities near business districts are inspected annually. Conversely, facilities farther away from business districts may be inspected less frequently and receive less frequent and less consistent maintenance attention, increasing the chance that small or remote facilities are large emitters. Therefore, EPA decided not to exclude remote stations. In this action, EPA is finalizing an option for transmission-distribution transfer stations that allows for surveying stations over a five-year period as opposed to surveying all stations annually. Thus the annual burden is not increased and the necessary data is collected over a longer period of time.

5. Associated With a Single Well-Pad

Comment: EPA received several comments requesting clarification on the intent of the proposed definition of ''associated with single well-pad'' in 40 CFR 98.238. Commenters submitted several diagrams depicting various configurations of equipment associated with the onshore production industry segment and requested EPA's confirmation of their understanding of which types of equipment would fall under the definition for ''associated with a well-pad.''

Response: In the proposed rule, the definition stated that onshore production storage tanks off of a well pad were included in the equipment that was considered to be associated with a well pad. After considering the comments received, EPA is amending the proposed definition of ''associated with a single well-pad'' in 40 CFR 98.238 to clarify that onshore production reporters do not report emissions from separators or tanks that receive oil from combined streams from multiple well-pads that are not on a single well-pad or associated with a single well-pad. However, under 40 CFR 98.233(j), onshore production reporters must report emissions from separators or tanks that are on a single well-pad or associated with a single well-pad.

6. Equipment Threshold for Internal Combustion Engines

Comment: In the GHGRP Revisions Proposal, EPA solicited comments on whether a 1 MMBtu/hr is sufficient to exclude all temporary and small (not compressor-drivers) internal combustion equipment. EPA received comments stating that a similar threshold to that which was in the 2010 final rule for external combustion devices should be applied to all internal combustion devices. Several commenters representing the natural gas distribution industry segment agreed with the proposal, but requested that the 1 mmBtu/hr threshold also be applied to natural gas engines. Further, commenters representing the onshore production industry segment noted that lease fuel is reported by the Energy Information Administration (EIA) which could be used to sufficiently characterize combustion emissions from devices on well pads and therefore internal combustion devices below 5 MMBtu/hr should not be required to be reported.

Response: EPA disagrees that a threshold of 5 MMBtu should be applied to internal combustion devices, as was done for external combustion devices in the November 2010 final rule for subpart W. In this action, EPA is finalizing a threshold of 1 MMBtu/hr threshold in 40 CFR 98.233(z) for internal combustion equipment. EPA has also clarified in the final provisions for this rule that this 1mmBtu threshold does not apply to compressor-drivers.

In considering potential equipment thresholds for internal combustion engines (not compressor-drivers), EPA collected and reviewed data on the horsepower rating of small, portable internal combustion engines that may be brought to a wellhead for periodic maintenance and construction. Such equipment can include electric generators for arc welding, electric generators powering portable flood-lighting, and electrical generators or gasoline engines powering air compressors (for sand blasting or pneumatic tools). For lighting, the industrial generators were almost exclusively below 12 horsepower (hp), with the highest found being 13.9 hp. For welding machines, we assumed that operators would use standard portable generators, since specific information on these types of machines was scarce. Most portable industrial generators are rated between 15–40 hp, with the largest one found being 67 hp. As a result, EPA determined that a 1 mmBtu/hour threshold, which equates to 393 hp, will exclude these smaller internal combustion devices. EPA has also determined that a 1 mmBtu/hour threshold may exclude a significant number of internal combustion engines on wellhead compressors, and is thus not applying this threshold to compressor-drivers. The equipment that would be excluded, if the threshold were raised above 1 mmBtu could include drilling rigs, workover rigs and hydraulic fracture pump engines, for example. EPA deems it necessary to collect data on these compressors to inform future policy because they are potentially large source of emissions and also there is not sufficient and reliable data available on these types of emissions sources. In response to the commenters' assertion that the information is reported by the EIA and therefore is not necessary to be reported under the greenhouse gas reporting rule, the EIA data is reported on a voluntary basis and the requirements for reporting are not standardized. As a result, the data available through EIA is not sufficiently accurate to exclude combustion devices from reporting.

Regarding the Commenters' request for the same 5 mmBtu/hour threshold for internal combustion as applied to external combustion, EPA is not accepting this change, because it could potentially exclude virtually all

wellhead compressors and engines, including those associated from drilling rigs which are large sources of GHG emissions. Comments on the subpart W proposed rule (75 FR 18608) included detailed itemization of heaters on tanks, separators, dehydrators and pipelines, often for winter freeze protection, with estimated numbers of these external combustion devices. From this information, EPA developed the 5 mmBtu/hour threshold to exclude reporting of emissions from these many sources which are not necessarily operated all year long and for which detailed records are not maintained on when winter heating is turned on and off, often by automated temperature controls. Similar data was not provided for internal combustion engines, and EPA does not have a good public record of the number of these engines or their typical duty.

7. Reporting 2011 Data Under Amended Rule

Comment: Several commenters requested that EPA resolve certain areas of uncertainty for calendar year 2011 data collection in the context of when the proposed revisions and technical corrections would be finalized for 40 CFR part 98, subpart W. Specifically, API raised concerns about two emissions sources; gas well venting during completions and workovers with hydraulic fracturing, and well venting for liquids unloading. API requested that for these two emission sources reporters be allowed the option to collect data in 2012 to meet the 2011 reporting requirements.

Response: EPA agrees that for the emission sources noted by the commenter; gas well venting from completions and workovers with hydraulic fracturing, and the well venting for liquids unloading emission source types, that reporters may use 2012 data collected prior to September 28, 2012 for reporting for the 2-year period–2011–2012.

Based on the provisions in the final rule for subpart W published in November 2010, reporters are to collect data every other year for use in the calculation methodologies outlined in the rule. Because of the timing in finalizing the technical corrections and technical revisions to subpart W, EPA believes that it would be appropriate for reporters to be allowed to use 2012 data collected prior to September 28, 2012 for reporting for the 2-year period 2011–2012. EPA believes that for this first two years of data collection for these emission sources that this would fall within the procedures for estimating missing data in 40 CFR 98.235. In addition, as previously mentioned, the measurement taken for the 2011–2012 data collection requirement must be taken in sufficient time to be reported by the September 28, 2011 reporting deadline for facilities reporting for onshore production. Where applicable, EPA asserts that reporters may use the procedures available in 40 CFR 98.235 for estimating missing data.

8. Blowdown Vent Stacks: Emergency Blowdown

Comment: Commenters noted ambiguity with the proposed revisions to account for emergency blowdowns and requested that EPA clarify that emergency events are excluded from blowdown vent stack emissions reporting. Commenters further suggested that EPA delete reporting of emissions from emergency blowdowns.

Response: EPA's intent is not to cover the blowdowns that are automatically monitored by a computer system which performs numerous actions for accident protection. EPA's intent is to cover those blowdown events that require *human* or *manned* intervention. To clarify this intent, Section 98.233(i) has been amended to clarify that blowdown vent emissions must include blowdowns from depressurizing equipment to reduce system pressure for planned or emergency shutdowns resulting from *human intervention* or to take equipment out of service for maintenance (excluding depressurizing to a flare, over-pressure relief, operating pressure control venting, etc.). Any equipment blowdown initiated by operator intervention (as opposed to automated controls that function in the absence of operator intervention), allows the operator to document the necessary data to determine the blowdown volume. In other words, if any instrument indicates that equipment needs to be taken out of service for any reason including what an operator might consider an emergency, and the operator actuates the automatic controls that isolate that equipment and opens the blowdown vent, then the operator can reasonably document what unique physical volume is isolated and depressurized, and what the starting and ending pressures are.

The blowdown events that are excluded include controls which cause venting in the absence of any operator presence or interaction. Examples include over-pressure relief valves, operational pressure controls, or automated emergency shutdown that includes opening vents to isolate and depressurize equipment without any human intervention.

9. Addition of Oil Formation Type in the Sub-Basin Category Definition

Comment: In September 2011, EPA proposed a definition for sub-basin category to replace the November 2010 delineation of wells within a basin according to fields. Commenters were supportive of the definition but suggested some modifications to the structure of the definition. For example, commenters pointed out that there was no formation defined for oil production. There are emission sources such as storage tanks that have to report emissions by sub-basin category. However, wells that produce oil and are not located in one of the four gas formations (shale gas, tight reservoir rock, coal seam, and conventional gas) were not represented in the September 2011 definition of the sub-basin category. Commenters requested that an oil formation type be added to the sub-basin category definition.

Response: EPA agrees with the commenters and has added oil formation type to the definition of sub-basin category in 40 CFR 98.238. Any well that produces hydrocarbon liquids and is not located in one of the four gas formations is now designated as oil formation. EPA notes that hydrocarbon liquids produced from wells in the gas formation (*i.e.* condensate) has to be accounted for in the respective gas formation and not the oil formation. The emission characteristics of hydrocarbon liquids produced in gas formations are different from hydrocarbon liquids produced in oil formations. Furthermore, EPA has removed the November 2010 definitions of oil wells and gas wells, since these were in conflict with the definition of sub-basin category. The November 2010 definitions for oil and gas wells were linked to the zones or reservoirs from which they were producing. However, the sub-basin category definition uses formation type. To keep all definitions interrelated and avoid conflicts EPA now defines a gas well as one which produces from a gas formation, and an oil well as one which produces from an oil formation in the sub-basin category definition.

10. Dehydrators Owned and Operated by Third Parties

Comment: EPA has received comments questioning the treatment of equipment such as a dehydrator located on a well-pad, but owned and operated by the gas processor, not the producer. One commenter noted that in the September 2011 proposal under § 98.230(a)(2), dehydrators are still referenced in the onshore petroleum

and natural gas production industry segment. This commenter then stated that dehydrators located on a well-pad and owned and operated by a gas processor should not report under onshore natural gas production because the gas processor is not a production owner or operator.

Response: The facility definition for onshore production in 40 CFR 98.238 is defined as all petroleum or natural gas equipment on a single well-pad or associated with a single well-pad and CO_2 EOR operations that are under common ownership or common control including leased, rented, or contracted activities by an onshore petroleum and natural gas production owner or operator and that are located in a single hydrocarbon basin. Reporters need to evaluate their situation against that definition to make a determination regarding the applicability of a dehydrator.

III. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action finalizes amendments to reporting methodologies in subpart W and amendments to clarify monitoring methodologies and data reporting requirements. In many cases, the amendments to the reporting requirements do not increase reporting burden but rather, ensure that the reporting requirements conform more closely to current industry practices. Therefore, the amendments to the information collection requirements have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document has been assigned EPA ICR number 2376.05.

The Office of Management and Budget has previously approved the information collection requirements contained in the existing rules, 40 CFR part 98 subpart W (75 FR 74458), under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0651 and 2060–0650 respectively. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

As part of the process for finalization of the subpart W rule (75 FR 74458), EPA undertook specific steps to evaluate the effect of that final rule on small entities. Under that final rule for subpart W (75 FR 74458) EPA conducted a screening assessment comparing compliance costs to onshore petroleum and natural gas industry specific receipts data for establishments owned by small businesses. The results of that screening analysis, as detailed in the preamble to the final rule for subpart W (75 FR 74482), demonstrated that the cost-to-sales ratios were less than one percent for establishments owned by small businesses that EPA considered most likely to be covered by the reporting program. The results of that analysis can be found in the preamble to the final rule (75 FR 74485).

Based on the final amendments in this action, EPA has increased flexibility in the selection of methods used for calculating GHG's by providing alternative methods where appropriate, revised specific methods in the rule to clarify requirements, clarified specific provisions related to applicability to clearly state EPA's intent, corrected technical errors in equations, and revised specific provisions to further clarify what must be reported and where measurement must be taken at a facility. These revisions do not add additional burden on reporters but maintain the data quality of the information being reported to EPA, and in many cases reduce burden. We have therefore concluded that this action will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

These final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the final rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might

significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Few, if any, State or local government facilities would be affected by the provisions in this final rule. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). During the finalization of subpart W in 2010 (75 FR 74458), EPA undertook the necessary steps to determine the impact of those rules on tribal entities and provided supporting documentation demonstrating the results of the Agency's analyses. And in several cases, the amendments to the reporting requirements would potentially reduce the reporting burden. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA consulted with tribal officials during the development of the subpart W (75 FR 74458). A summary of the concerns raised during that consultation and EPA's response to those concerns is provided in Sections VIII.E and VIII.F of the preamble to the 2009 final rule and Section IV.F of the preamble to the 2010 final rule for subpart W (75 FR 74485).

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 28, 2011.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Suppliers, Reporting and recordkeeping requirements.

Dated: December 2, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 98—[AMENDED]

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 2. Section 98.1 is amended by adding paragraph (c) to read as follows:

§ 98.1 Purpose and scope.

* * * * *

(c) For facilities required to report under onshore petroleum and natural gas production under subpart W of this part, the terms *Owner* and *Operator* used in subpart A have the same definition as *Onshore petroleum and natural gas production owner or operator,* as defined in § 98.238 of this part.

■ 3. Section 98.6 is amended by revising the definitions of ''Continuous bleed'' and ''Intermittent bleed pneumatic devices'' to read as follows:

§ 98.6 Definitions.

* * * * *

Continuous bleed means a continuous flow of pneumatic supply natural gas to the process control device (*e.g.*, level control, temperature control, pressure control) where the supply gas pressure is modulated by the process condition, and then flows to the valve controller where the signal is compared with the

process set-point to adjust gas pressure in the valve actuator.

* * * * *

Intermittent bleed pneumatic devices mean automated flow control devices powered by pressurized natural gas and used for automatically maintaining a process condition such as liquid level, pressure, delta-pressure, and temperature. These are snap-acting or throttling devices that discharge all or a portion of the full volume of the actuator intermittently when control action is necessary, but do not bleed continuously.

* * * * *

Subpart W—[Amended]

■ 4. Section 98.230 is amended by revising paragraphs (a)(2) through (a)(4), and (a)(8) to read as follows:

§ 98.230 Definition of the source category.

(a) * * *

(2) *Onshore petroleum and natural gas production.* Onshore petroleum and natural gas production means all equipment on a single well-pad or associated with a single well-pad (including but not limited to compressors, generators, dehydrators, storage vessels, and portable non-self-propelled equipment which includes well drilling and completion equipment, workover equipment, gravity separation equipment, auxiliary non-transportation-related equipment, and leased, rented or contracted equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum and/or natural gas (including condensate). This equipment also includes associated storage or measurement vessels and all enhanced oil recovery (EOR) operations using CO_2 or natural gas injection, and all petroleum and natural gas production equipment located on islands, artificial islands, or structures connected by a causeway to land, an island, or an artificial island.

(3) *Onshore natural gas processing.* Natural gas processing means the separation of natural gas liquids (NGLs) or non-methane gases from produced natural gas, or the separation of NGLs into one or more component mixtures. Separation includes one or more of the following: forced extraction of natural gas liquids, sulfur and carbon dioxide removal, fractionation of NGLs, or the capture of CO_2 separated from natural gas streams. This segment also includes all residue gas compression equipment owned or operated by the natural gas processing plant. This industry segment includes processing plants that fractionate gas liquids, and processing plants that do not fractionate gas liquids but have an annual average throughput of 25 MMscf per day or greater.

(4) *Onshore natural gas transmission compression.* Onshore natural gas transmission compression means any stationary combination of compressors that move natural gas from production fields, natural gas processing plants, or other transmission compressors through transmission pipelines to natural gas distribution pipelines, LNG storage facilities, or into underground storage. In addition, a transmission compressor station includes equipment for liquids separation, and tanks for the storage of water and hydrocarbon liquids. Residue (sales) gas compression that is part of onshore natural gas processing plants are included in the onshore natural gas processing segment and are excluded from this segment.

* * * * *

(8) *Natural gas distribution.* Natural gas distribution means the distribution pipelines and metering and regulating equipment at metering-regulating stations that are operated by a Local Distribution Company (LDC) within a single state that is regulated as a separate operating company by a public utility commission or that is operated as an independent municipally-owned distribution system. This segment also excludes customer meters and regulators, infrastructure, and pipelines (both interstate and intrastate) delivering natural gas directly to major industrial users and farm taps upstream of the local distribution company inlet.

* * * * *

■ 5. Section 98.232 is amended by:

■ a. Revising paragraph (a).

■ b. Revising paragraph (c) introductory text.

■ c. Revising paragraph (c)(22).

■ d. Revising paragraph (d) introductory text.

■ e. Revising paragraph (e) introductory text.

■ f. Revising paragraph (f) introductory text.

■ g. Revising paragraph (g) introductory text.

■ h. Revising paragraph (h) introductory text.

■ i. Revising paragraph (i).

■ j. Removing and reserving paragraph (j).

■ k. Revising paragraph (k).

The revisions read as follows:

§ 98.232 GHGs to report.

(a) You must report CO_2, CH_4, and N_2O emissions from each industry segment specified in paragraph (b) through (i) of this section, CO_2, CH_4, and N_2O emissions from each flare as specified in paragraph (b) through (i) of this section, and stationary and portable combustion emissions as applicable as specified in paragraph (k) of this section.

* * * * *

(c) For an onshore petroleum and natural gas production facility, report CO_2, CH_4, and N_2O emissions from only the following source types on a single well-pad or associated with a single well-pad:

* * * * *

(22) You must use the methods in § 98.233(z) and report under this subpart the emissions of CO_2, CH_4, and N_2O from stationary or portable fuel combustion equipment that cannot move on roadways under its own power and drive train, and that is located at an onshore petroleum and natural gas production facility as defined in § 98.238. Stationary or portable equipment are the following equipment, which are integral to the extraction, processing, or movement of oil or natural gas: well drilling and completion equipment, workover equipment, natural gas dehydrators, natural gas compressors, electrical generators, steam boilers, and process heaters.

(d) For onshore natural gas processing, report CO_2, CH_4, and N_2O emissions from the following sources:

* * * * *

(e) For onshore natural gas transmission compression, report CO_2, CH_4, and N_2O emissions from the following sources:

* * * * *

(f) For underground natural gas storage, report CO_2, CH_4, and N_2O emissions from the following sources:

* * * * *

(g) For LNG storage, report CO_2, CH_4, and N_2O emissions from the following sources:

* * * * *

(h) LNG import and export equipment, report CO_2, CH_4, and N_2O emissions from the following sources:

* * * * *

(i) For natural gas distribution, report CO_2, CH_4, and N_2O emissions from the following sources:

(1) Meters, regulators, and associated equipment at above grade transmission-distribution transfer stations, including equipment leaks from connectors, block valves, control valves, pressure relief valves, orifice meters, regulators, and open ended lines.

(2) Equipment leaks from vaults at below grade transmission-distribution transfer stations.

(3) Meters, regulators, and associated equipment at above grade metering-regulating station.

(4) Equipment leaks from vaults at below grade metering-regulating stations.

(5) Pipeline main equipment leaks.

(6) Service line equipment leaks.

(7) Report under subpart W of this part the emissions of CO_2, CH_4, and N_2O emissions from stationary fuel combustion sources following the methods in § 98.233(z)

(j) [Reserved]

(k) Report under subpart C of this part (General Stationary Fuel Combustion Sources) the emissions of CO_2, CH_4, and N_2O from each stationary fuel combustion unit by following the requirements of subpart C except for facilities under onshore petroleum and natural gas production and natural gas distribution. Onshore petroleum and natural gas production facilities must report stationary and portable combustion emissions as specified in paragraph (c) of this section. Natural gas distribution facilities must report stationary combustion emissions as specified in paragraph (i) of this section.

* * * * *

■ 6. Section 98.233 is amended by:

■ a. In paragraph (a), revising Equation W–1 and its definitions.

■ b. Adding paragraph (a)(3).

■ c. In paragraph (c), revising Equation W–2 and its definitions.

■ d. Revising paragraphs (d) introductory text and (d)(1).

■ e. Revising the first sentence of paragraph (d)(2) and the definition ''V_s'' in Equation W–3.

■ f. Revising paragraph (d)(3).

■ g. Revising the first sentence of paragraph (d)(4) introductory text.

■ h. Revising paragraph (e) introductory text, (e)(1) introductory text, (e)(1)(vii), (e)(1)(xi) introductory text, (e)(1)(xi)(A) through (C), and (e)(2) introductory text.

■ i. In paragraph (e)(2), revising the definition of ''EF_i'', ''Count'', and ''1000'' in Equation W–5.

■ j. Revising the first sentence of paragraph (e)(5) introductory text.

■ k. Revising paragraph (e)(6).

■ l. Revising paragraph (f)(1) introductory text.

■ m. Revising paragraphs (f)(1)(i)(A) through (f)(1)(i)(C).

■ n. Revising paragraph (f)(2).

■ o. In paragraph (f)(3) introductory text, revising Equation W–9 and its definitions.

■ p. Removing and reserving paragraphs (f)(3)(i) and (f)(3)(ii).

■ q. Revising paragraph (g) introductory text.

■ r. Revising paragraphs (g)(1) introductory text and (g)(1)(i).

■ s. Revising paragraph (g)(1)(ii) introductory text; removing Equation W–11 and its definitions, adding Equations W–11A, W–11B, W–11C and their definitions, and revising W–12 and its definitions.

■ t. Redesignating paragraphs (g)(1)(ii)(A) through (g)(1)(ii)(C) as paragraphs (g)(1)(iii) through (g)(1)(v) and revising newly redesignated paragraphs (g)(1)(iii) through (g)(1)(v).

■ u. Removing paragraph (g)(1)(ii)(D).

■ v. Revising paragraph (g)(3).

■ w. Removing paragraph (g)(5) and redesignating paragraph (g)(6), (g)(6)(i), and (g)(6)(ii) as (g)(5), (g)(5)(i), and (g)(5)(ii).

■ x. Revising paragraph (h) introductory text.

■ y. Removing paragraph (h)(1).

■ z. Redesignating paragraphs (h)(2) and (h)(3) introductory text as paragraphs (h)(1) and (h)(2) introductory text, respectively, and revising newly redesignated paragraph (h)(1).

■ aa. Revising paragraph (i).

■ bb. Revising the first sentence of paragraph (j)(1) and revising paragraphs (j)(1)(vii) introductory text, (j)(1)(vii)(B), and (j)(1)(vii)(C).

■ cc. Revising paragraph (j)(2).

■ dd. Revising paragraph (j)(3) introductory text and paragraph (j)(3)(i).

■ ee. Revising paragraph (j)(4) introductory text.

■ ff. In paragraph (j)(5), revising Equation W–15, revising the definitions of ''EF_i'' and ''Count'', and adding the definition of ''1,000''.

■ gg. In paragraph (j)(8), revising Equation W–16, revising the definition of ''En'', removing the definition of ''E_t'', and adding the definition of ''8,760''.

■ hh. Revising paragraphs (k) introductory text, (k)(1), (k)(2) introductory text, (k)(2)(i), and (k)(4); and adding new paragraph (k)(2)(iv).

■ ii. Revising paragraph (l)(1).

■ jj. Revising paragraph (l)(3).

■ kk. Revising paragraph (m)(1) and revising equation W–18 and its definitions in paragraph (m)(3).

■ ll. Revising paragraph (n)(2)(ii) and (n)(2)(iii), and in paragraph (n)(4), republishing Equations W–19 and W–20 and revising Equation W–21.

■ mm. Redesignating paragraph (n)(9) as paragraph (n)(10) and adding new paragraphs (n)(9) and (n)(11).

■ nn. In paragraph (o)(6), revising the definition of ''MT_m'' in Equation W–24.

■ oo. In paragraph (o)(7), revising the definition of ''EF_i'' in Equation W–25.

■ pp. In paragraph (p)(7)(i) introductory text, revising the definition of ''MT_m'' in Equation W–28.

■ qq. In paragraph (p)(9), revising the definition of ''EF_i'' in Equation W–29.

■ rr. Revising paragraph (q) introductory text.

■ ss. Revising paragraph (q)(8).

■ tt. Revising paragraph (r) introductory text and the definitions in Equation W–31.

■ uu. Revising paragraphs (r)(2)(i)(A), (r)(6)(i), (r)(6)(ii).

■ vv. Revising introductory texts for paragraphs (t) and (t)(1), and revising the definitions of ''T_s'' and ''P_s'' in Equation W–33.

■ ww. Revising paragraph (t)(2) and the parameters ''T_s'' and ''P_s'' in Equation W–34.

■ xx. Adding paragraph (t)(3).

■ yy. Revising paragraph (u) introductory text, paragraph (u)(2).

■ zz. In paragraph (v), revising the only sentence of paragraph (v), Equation W–36, and the definitions of ''$Mass_{s,i}$'', ''$E_{s,i}$'', and ''ρ_i'' in Equation W–36.

■ aaa. In paragraph (w)(3), revising Equation W–37 and the definitions of parameters ''$Mass_{c,i}$'' and ''GHG_i''.

■ bbb. In paragraph (x)(2), revising Equation W–38 and the definitions of parameter ''$Mass_{s,CO2}$''.

■ ccc. Revising paragraph (z) introductory text, (z)(1),(z)(2)introductory text, (z)(2)(i),(z(2)(ii), (z)(2)(iii), and (z)(3).

■ ddd. Redesignating paragraphs (z)(4), (z)(5), and (z)(6) as (z)(2)(iv), (z)(2)(v), and (z)(2)(vi), respectively.

■ eee. In newly redesignated paragraph (z)(2)(vi), revising Equation W–40, removing the definition for N_2O, revising the definition of ''HHV'', and adding the definitions ''GWP'' and ''$Mass_{,N2O}$''.

■ fff. Adding paragraph (z)(4).

The revisions read as follows:

§ 98.233 Calculating GHG emissions.

(a) * * *

$$Mass_{t,i} = Count_t * EF_t * GHG_i * Conv_i * T_t \qquad \text{(Eq. W-1)}$$

Where:

$Mass_{t,i}$ = Annual total mass GHG emissions in metric tons CO_2e per year from a natural gas pneumatic device vent of type ''t'', for GHG_i.

$Count_t$ = Total number of natural gas pneumatic devices of type ''t'' (continuous high bleed, continuous low bleed, intermittent bleed) as determined in paragraph (a)(1), (a)(2), and (a)(3) of this section.

EF_t = Population emission factors for natural gas pneumatic device venting listed in Tables W–1A, W–3, and W–4 of this subpart for onshore petroleum and natural gas production, onshore natural gas transmission compression, and underground natural gas storage facilities, respectively.

GHG_i = For onshore petroleum and natural gas production facilities, concentration of GHG_i, CH_4, or CO_2, in natural gas as defined in paragraph (u)(2)(i) of this section and for onshore natural gas transmission compression and underground natural gas storage, GHG_i equals 0.975 for CH_4 and 1.1×10^{-2} for CO_2.

$Conv_i$ = Conversion from standard cubic feet to metric tons CO_2e; 0.000403 for CH_4, and 0.00005262 for CO_2.

T_t = Average estimated number of hours in the operating year the devices, of each type t, were operational. Default is 8760 hours.

* * * * *

(3) For all industry segments, determine the type of pneumatic device using engineering estimates based on best available information.

* * * * *

(c) * * *

$$Mass_i = Count * EF * GHG_i * Conv_i * T \qquad \text{(Eq. W-2)}$$

Where:

$Mass_i$ = Annual total mass GHG emissions in metric tons CO_2e per year from all natural gas pneumatic pump venting, for GHG_i.

Count = Total number of natural gas pneumatic pumps.

EF = Population emissions factors for natural gas pneumatic pump venting listed in Tables W–1A of this subpart for onshore petroleum and natural gas production.

GHG_i = Concentration of GHG_i, CH_4, or CO_2, in produced natural gas as defined in paragraph (u)(2)(i) of this section.

$Conv_i$ = Conversion from standard cubic feet to metric tons CO_2e; 0.000403 for CH_4, and 0.00005262 for CO_2.

T = Average estimated number of hours in the operating year the pumps were operational. Default is 8760 hours.

(d) *Acid gas removal (AGR) vents.* For AGR vent (including processes such as amine, membrane, molecular sieve or other absorbents and adsorbents), calculate emissions for CO_2 only (not CH_4) vented directly to the atmosphere or through a flare, engine (*e.g.,* permeate from a membrane or de-adsorbed gas from a pressure swing adsorber used as fuel supplement), or sulfur recovery plant using any of the calculation methodologies described in paragraph (d) of this section, as applicable.

(1) *Calculation Methodology 1.* If you operate and maintain a CEMS that has both a CO_2 concentration monitor and volumetric flow rate monitor, you must calculate CO_2 emissions under this subpart by following the Tier 4 Calculation Methodology and all associated calculation, quality assurance, reporting, and recordkeeping requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources). Alternatively, you may follow the manufacturer's instructions or industry standard practice. If a CO_2 concentration monitor and volumetric flow rate monitor are not available, you may elect to install a CO_2 concentration monitor and a volumetric flow rate monitor that comply with all of the requirements specified for the Tier 4 Calculation Methodology in subpart C of this part (General Stationary Fuel Combustion). The calculation and reporting of CH_4 and N_2O emissions is not required as part of the Tier 4 requirements for AGRs.

(2) *Calculation Methodology 2.* If CEMS is not available but a vent meter is installed, use the CO_2 composition and annual volume of vent gas to calculate emissions using Equation W–3 of this section.

* * * * *

V_S = Total annual volume of vent gas flowing out of the AGR unit in cubic feet per year at actual conditions as determined by flow meter using methods set forth in § 98.234(b). Alternatively, you may follow the manufacturer's instructions or industry standard practice for calibration of the vent meter.

* * * * *

(3) *Calculation Methodology 3.* If CEMS or a vent meter is not installed, you may use the inlet or outlet gas flow rate of the acid gas removal unit to calculate emissions for CO_2 using Equations W–4A or W–4B of this section. If inlet gas flow rate is known, use Equation W–4A. If outlet gas flow rate is known, use Equation W–4B.

$$E_{a,CO2} = V_{in} * \left[\frac{Vol_I - Vol_O}{1 - Vol_O} \right] \qquad \text{(Eq. W-4A)}$$

$$E_{a,CO2} = V_{out} * \left[\frac{Vol_I - Vol_O}{1 - Vol_I} \right] \qquad \text{(Eq. W-4B)}$$

Where:

$E_{a,\ CO2}$ = Annual volumetric CO_2 emissions at actual conditions, in cubic feet per year.

V_{in} = Total annual volume of natural gas flow into the AGR unit in cubic feet per year at actual condition as determined using methods specified in paragraph (d)(5) of this section.

V_{out} = Total annual volume of natural gas flow out of the AGR unit in cubic feet per year at actual condition as determined using methods specified in paragraph (d)(5) of this section.

Vol_I = Volume fraction of CO_2 content in natural gas into the AGR unit as determined in paragraph (d)(7) of this section.

Vol_o = Volume fraction of CO_2 content in natural gas out of the AGR unit as determined in paragraph (d)(8) of this section.

(4) *Calculation Methodology 4.* If CEMS or a vent meter is not installed, you may calculate emissions using any standard simulation software packages, such as AspenTech HYSYS® and API 4679 AMINECalc, that uses the Peng-Robinson equation of state, and speciates CO_2 emissions.* * *

* * * * *

(e) *Dehydrator vents.* For dehydrator vents, calculate annual CH_4, CO_2 and N_2O emissions using any of the

calculation methodologies described in paragraph (e) of this section.

(1) *Calculation Methodology 1.* Calculate annual mass emissions from dehydrator vents with annual average daily throughput greater than or equal to 0.4 million standard cubic feet per day using a software program, such as AspenTech HYSYS® or GRI–GLYCalc, that uses the Peng-Robinson equation of state to calculate the equilibrium coefficient, speciates CH_4 and CO_2 emissions from dehydrators, and has provisions to include regenerator control devices, a separator flash tank, stripping gas and a gas injection pump or gas assist pump. A minimum of the following parameters determined by engineering estimate based on best available data must be used to characterize emissions from dehydrators:

* * * * *

(vii) Use of stripping gas.

* * * * *

(xi) Wet natural gas composition. Determine this parameter by selecting one of the methods described under paragraph (e)(1)(xi) of this section.

(A) Use the wet natural gas composition as defined in paragraph (u)(2)(i) or (u)(2)(ii) of this section.

(B) If wet natural gas composition cannot be determined using paragraph (u)(2)(i) or (u)(2)(ii) of this section, select a representative analysis.

(C) You may use an appropriate standard method published by a consensus-based standards organization if such a method exists or you may use an industry standard practice as specified in § 98.234(b) to sample and analyze wet natural gas composition.

* * * * *

(2) *Calculation Methodology 2.* Calculate annual CH_4 and CO_2 emissions from glycol dehydrators with annual average daily throughput less than 0.4 million standard cubic feet per day using Equation W–5 of this section:

* * * * *

EF_i = Population emission factors for glycol dehydrators in thousand standard cubic feet per dehydrator per year. Use 73.4 for CH_4 and 3.21 for CO_2 at 60 °F and 14.7 psia.

Count = Total number of glycol dehydrators with throughput less than 0.4 million standard cubic feet per day.

1000 = Conversion of EF_i in thousand standard cubic feet to standard cubic feet.

* * * * *

(5) Dehydrators that use desiccant shall calculate emissions from the amount of gas vented from the vessel when it is depressurized for the desiccant refilling process using Equation W–6 of this section. * * *

* * * * *

(6) For glycol dehydrators, both CH_4 and CO_2 mass emissions shall be calculated from volumetric GHG_i emissions using calculations in paragraph (v) of this section. For dehydrators that use desiccant, both CH_4 and CO_2 volumetric and mass emissions shall be calculated from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

(f) * * *

(1) *Calculation Methodology 1.* For one well of each unique well tubing diameter group and pressure group combination in each sub-basin category (see § 98.238 for the definitions of tubing diameter group, pressure group, and sub-basin category), where gas wells are vented to the atmosphere to expel liquids accumulated in the tubing, a recording flow meter shall be installed on the vent line used to vent gas from the well (*e.g.,* on the vent line off the wellhead separator or atmospheric storage tank) according to methods set forth in § 98.234(b). Calculate emissions from well venting for liquids unloading using Equation W–7 of this section.

$$E_{a,n} = \sum_{p=1}^{h} T_p FR_p \qquad \text{(Eq. W-7)}$$

Where:

$E_{a,n}$ = Annual natural gas emissions for all wells of the same tubing diameter group and pressure group combination in a sub-basin at actual conditions in cubic feet.

h = Total number of wells of the same tubing diameter group and pressure group combination in a sub-basin.

p = Wells 1 through h of the same tubing diameter group and pressure group combination in a sub-basin.

T_p = Cumulative amount of time in hours of venting from the measured well, p, of the same tubing diameter group and pressure group combination in a sub-basin during the year.

FR_p = Average flow rate in cubic feet per hour of a measured well venting for the duration of the liquids unloading, under actual conditions as determined in paragraph (f)(1)(i) of this section.

(i) * * *

(A) The average flow rate per hour of venting is calculated for each unique tubing diameter group and pressure group combination in each sub-basin category by dividing the recorded total flow by the recorded time (in hours) for a single liquid unloading with venting to the atmosphere.

(B) This average flow rate per hour is applied to all wells in the same pressure group that have the same tubing diameter group, for the number of hours of venting these wells.

(C) A new average flow rate is calculated every other calendar year for each reporting sub-basin category starting the first calendar year of data collection. For a new producing sub-basin category, an average flow rate is calculated beginning in the first year of production.

* * * * *

(2) *Calculation Methodology 2.* Calculate the total emissions for well venting for liquids unloading using Equation W–8 of this section.

$$E_{s,n} = \sum_{p=1}^{W}\left[V_p \times \left(\left(0.37\times10^{-3}\right)\times CD_p^2 \times WD_p \times SP_p\right) + \sum_{q=1}^{V_p}\left(SFR_q \times \left(HR_{p,q} - 1.0\right)\times Z_{p,q}\right)\right] \qquad \text{(Eq. W-8)}$$

Where:

$E_{s,n}$ = Annual natural gas emissions at standard conditions, in cubic feet/year.

W = Total number of wells with well venting for liquids unloading for each sub-basin.

0.37×10^{-3} = {3.14 (pi)/4}/{14.7*144} (psia converted to pounds per square feet).

CD_p = Casing internal diameter for each well, p, in inches.

WD_p = Well depth from either the top of the well or the lowest packer to the bottom of the well, for each well, p, in feet.

SP_p = Shut-in pressure or surface pressure for wells with tubing production and no packers or casing pressure for each well, p, in pounds per square inch absolute (psia) or casing-to-tubing pressure of one well from the same sub-basin multiplied by the tubing pressure of each well, p, in the sub-basin, in pounds per square inch absolute (psia).

V_p = Number of vents per year per well, p.

SFR_p = Average flow-line rate of gas for well, p, at standard conditions in cubic feet per hour. Use Equation W–33 to calculate the average flow-line rate at standard conditions.

$HR_{p,q}$ = Hours that each well, p, was left open to the atmosphere during unloading, q.

1.0 = Hours for average well to blowdown casing volume at shut-in pressure.

$Z_{p,q}$ = If $HR_{p,q}$ is less than 1.0 then $Z_{p,q}$ is equal to 0. If $HR_{p,q}$ is greater than or equal to 1.0 then $Z_{p,q}$ is equal to 1.

(3) * * *

$$E_{s,n} = \sum_{p=1}^{W}\left[V_p \times \left(\left(0.37\times10^{-3}\right)\times TD_p^2 \times WD_p \times SP_p\right) + \sum_{q=1}^{V_p}\left(SFR_q \times \left(HR_{p,q} - 0.5\right)\times Z_{p,q}\right)\right] \quad \text{(Eq. W-9)}$$

Where:

$E_{s,n}$ = Annual natural gas emissions at standard conditions, in cubic feet/year.

W = Total number of wells with well venting for liquids unloading for each sub-basin.

0.37×10^{-3} = {3.14 (pi)/4}/{14.7*144} (psia converted to pounds per square feet).

TD_p = Tubing internal diameter for each well, p, in inches.

WD_p = Tubing depth to plunger bumper for each well, p, in feet.

SP_p = Flow-line pressure for each well, p, in pounds per square inch absolute (psia), using engineering estimate based on best available data.

V_p = Number of vents per year for each well, p.

SFR_p = Average flow-line rate of gas for well, p, at standard conditions in cubic feet per hour. Use Equation W–33 to calculate the average flow-line rate at standard conditions.

$HR_{p,q}$ = Hours that each well, p, was left open to the atmosphere during each unloading, q.

0.5 = Hours for average well to blowdown tubing volume at flow-line pressure.

$Z_{p,q}$ = If $HR_{p,q}$ is less than 0.5 then $Z_{p,q}$ is equal to 0. If $HR_{p,q}$ is greater than or equal to 0.5 then $Z_{p,q}$ is equal to 1.

(i) [Reserved]

(ii) [Reserved]

(g) *Gas well venting during completions and workovers from hydraulic fracturing.* Calculate CH_4, CO_2 and N_2O annual emissions from gas well venting during completions involving hydraulic fracturing in wells and well workovers using Equation W–10A or Equation W–10B of this section. Equation W–10A applies to well venting when the backflow rate is measured or calculated, Equation W–10B applies when the backflow vent or flare volume is measured. Use Equation W–10A if the flow rate for backflow during well completions and workovers from hydraulic fracturing is known for the specified number of wells per paragraph (g)(1) in a sub-basin and well type (horizontal or vertical) combination. Use Equation W–10B if the flow volume for backflow during well completions and workovers from hydraulic fracturing is known for all wells in a sub-basin and well type (horizontal or vertical) combination. Both CH_4 and CO_2 volumetric and mass emissions shall be calculated from volumetric total gas emissions using calculations in paragraphs (u) and (v) of this section.

$$E_{s,n} = \sum_{p=1}^{W}\left[T_p \times FRM \times PR_p - EnF_p - SG_p\right] \quad \text{(Eq. W-10A)}$$

$$E_{s,n} = \sum_{p=1}^{W}\left[FV_p - EnF_p\right] \quad \text{(Eq. W-10B)}$$

Where:

$E_{s,n}$ = Annual volumetric total gas emissions in cubic feet at standard conditions from gas well venting during completions or workovers following hydraulic fracturing for each sub-basin and well type (horizontal vs. vertical) combination.

W = Total number of wells completed or worked over using hydraulic fracturing in a sub-basin and well type (horizontal vs. vertical) combination.

T_p = Cumulative amount of time of backflow for the completion or workover, in hours, for each well, p, in a sub-basin and well type (horizontal vs. vertical) combination during the reporting year.

FRM = Ratio of backflow during well completions and workovers from hydraulic fracturing to 30-day production rate from Equation W–12.

PR_p = First 30-day average production flow rate in standard cubic feet per hour of each well p, under actual conditions, converted to standard conditions, as required in paragraph (g)(1) of this section.

EnF_p = Volume of CO_2 or N_2 injected gas in cubic feet at standard conditions that was injected into the reservoir during an energized fracture job for each well p. If the fracture process did not inject gas into the reservoir, then EnF_p is 0. If injected gas is CO_2, then EnF_p is 0.

SG_p = Volume of natural gas in cubic feet at standard conditions that was recovered into a flow-line for well p as per paragraph (g)(3) of this section. This parameter includes any natural gas that is injected into the well for clean-up. If no gas was recovered, SG_p is 0.

FV_p = Flow volume of each well (p) in standard cubic feet per hour measured using a recording flow meter (digital or analog) on the vent line to measure backflow during the completion or workover according to methods set forth in § 98.234(b).

(1) The average flow rate for backflow during well completions and workovers from hydraulic fracturing shall be determined using measurement(s) for calculation methodology 1 or calculation(s) for calculation methodology 2 described in this paragraph (g)(1) of this section. If Equation W–10A is used, the number of measurements or calculations shall be determined per sub-basin and well type (horizontal or vertical) as follows: one measurement or calculation for less than or equal to 25 completions or workovers; two measurements or calculations for 26 to 50 completions or workovers; three measurements or calculations for 51 to 100 completions or workovers; four measurements or calculations for 101 to 250 completions or workovers; and five measurements or calculations for greater than 250 completions or workovers.

(i) *Calculation Methodology 1.* When using Equation W–10A, for each measured well completion(s) in each gas producing sub-basin category and well type (horizontal or vertical) combination and for each measured well workover(s) in each gas producing sub-basin category and well type (horizontal or vertical) combination, a recording flow meter (digital or analog) shall be installed on the vent line, ahead of a flare or vent if used, to measure the backflow rate according to methods set forth in § 98.234(b).

(ii) *Calculation Methodology 2.* When using Equation W–10A, for each calculated horizontal well completion

and each calculated vertical well completion in each gas producing sub-basin category and for each calculated well horizontal workover and for each calculated vertical well workover in each gas producing sub-basin category, record the well flowing pressure upstream (and downstream in subsonic flow) of a well choke according to methods set forth in § 98.234(b) to calculate the well backflow during well completions and workovers from hydraulic fracturing. Calculate emissions using Equation W–11A of this section for subsonic flow or Equation W–11B of this section for sonic flow. Use best engineering estimate based on best available data along with Equation W–11C of this section to determine whether the predominant flow is sonic or subsonic. If the value of R in Equation W–11C is greater than or equal to 2, then flow is sonic; otherwise, flow is subsonic:

$$FR = 1.27 * 10^5 * A * \sqrt{3430 * T_u * \left[\left(\frac{P_2}{P_1}\right)^{1.515} - \left(\frac{P_2}{P_1}\right)^{1.758}\right]} \qquad \text{(Eq. W-11A)}$$

Where:

FR = Average flow rate in cubic feet per hour, under subsonic flow conditions.

A = Cross sectional area of orifice (m^2).

P_1 = Upstream pressure (psia).

T_u = Upstream temperature (degrees Kelvin).

P_2 = Downstream pressure (psia).

3430 = Constant with units of $m^2/(sec^2 * K)$.

$1.27*10^5$ = Conversion from m^3/second to ft^3/hour.

$$FR = 1.27 * 10^5 * A * \sqrt{187.08 * T_u} \qquad \text{(Eq. W-11B)}$$

Where:

FR = Average flow rate in cubic feet per hour, under sonic flow conditions.

A = Cross sectional area of orifice (m^2).

T_u = Upstream temperature (degrees Kelvin).

187.08 = Constant with units of $m^2/(sec^2 * K)$.

$1.27*10^5$ = Conversion from m^3/second to ft^3/hour.

$$R = P1/P2 \qquad \text{(Eq. W-11C)}$$

Where:

R = Pressure ratio

P1 = Pressure upstream of the restriction orifice in pounds per square inch absolute.

P2 = Pressure downstream of the restriction orifice in pounds per square inch absolute.

(iii) For Equation W–10A, the ratio of backflow rate during well completions and workovers from hydraulic fracturing to 30-day production rate is calculated using Equation W–12 of this section.

$$FRM = \frac{\sum_{p=1}^{W} FR_p}{\sum_{p=1}^{W} PR_p} \qquad \text{(Eq. W-12)}$$

Where:

FRM = Ratio of backflow rate during well completions and workovers from hydraulic fracturing to 30-day production rate.

FR_p = Measured backflow rate from Calculation Methodology 1 or calculated flow rate from Calculation Methodology 2 in standard cubic feet per hour for well(s) p for each sub-basin and well type (horizontal or vertical) combination. You may not use flow volume as used in Equation W–10B converted to a flow rate for this parameter.

PR_p = First 30-day production rate in standard cubic feet per hour for each well p that was measured in the sub-basin and well type combination.

W = Number of wells completed or worked over using hydraulic fracturing in a sub-basin and well type formation.

(iv) For Equation W–10A, the ratio of backflow rate during well completions and workovers from hydraulic fracturing to 30-day production rate for horizontal and vertical wells are applied to all horizontal and vertical well completions in the gas producing sub-basin and well type combination and to all horizontal and vertical well workovers, respectively, in the gas producing sub-basin and well type combination for the total number of hours of backflow for each of these wells.

(v) For Equation W–10A, new flow rates for horizontal and vertical gas well completions and horizontal and vertical gas well workovers in each sub-basin category shall be calculated once every two years starting in the first calendar year of data collection.

* * * * *

(3) Determine if the backflow gas from the well completion or workover from hydraulic fracturing is recovered with purpose designed equipment that separates natural gas from the backflow, and sends this natural gas to a flow-line (*e.g.,* reduced emissions completion or workovers).

(i) Use the factor SG_P in Equation W–10A of this section, to adjust the emissions estimated in paragraphs (g)(1) through (g)(4) of this section by the magnitude of emissions captured using purpose designed equipment that separates saleable gas from the backflow as determined by engineering estimate based on best available data.

(ii) [Reserved]

(iii) Calculate gas volume at standard conditions using calculations in paragraph (t) of this section.

* * * * *

(h) *Gas well venting during completions and workovers without hydraulic fracturing.* Calculate CH_4, CO_2 and N_2O emissions from each gas well venting during well completions and workovers not involving hydraulic fracturing using Equation W–13 of this section:

$$E_{s,n} = N_{wo} * EF_{wo} + \sum_{p=1}^{f} V_p * T_p \qquad \text{(Eq. W-13)}$$

Where:

$E_{s,n}$ = Annual natural gas emissions in standard cubic feet from a gas well venting during well completions and workovers without hydraulic fracturing.

N_{wo} = Number of workovers per sub-basin category that flare gas or vent gas to the atmosphere and do not involve hydraulic fracturing in the reporting year.

EF_{wo} = Emission Factor for non-hydraulic fracture well workover venting in standard cubic feet per workover. EF_{wo} = 3114 standard cubic feet natural gas per well workover without hydraulic fracturing.

p = Well completions 1 through f in a sub-basin.

f = Total number of well completions without hydraulic fracturing in a sub-basin category.

V_p = Average daily gas production rate in standard cubic feet per hour for each well completion without hydraulic fracturing, p. This is the total annual gas production volume divided by total number of hours the wells produced to the flow-line. For completed wells that have not established a production rate, you may use the average flow rate from the first 30 days of production. In the event that the well is completed less than 30 days from the end of the calendar year, the first 30 days of the production straddling the current and following calendar years shall be used.

T_p = Time each well completion without hydraulic fracturing, p, was venting in hours during the year.

(1) Volumetric emissions for both CH_4 and CO_2 shall be calculated from volumetric natural gas emissions using calculations in paragraph (u) of this section. Mass emissions for both CH_4 and CO_2 shall be calculated from volumetric natural gas emissions using calculations in paragraphs (v) of this section.

* * * * *

(i) *Blowdown vent stacks.* Calculate CO_2 and CH_4 blowdown vent stack emissions from depressurizing equipment(s) to reduce system pressure for planned or emergency shutdowns resulting from human intervention or to take equipment out of service for maintenance (excluding depressurizing to a flare, over-pressure relief, operating pressure control venting and blowdown of non-GHG gases; desiccant dehydrator blowdown venting before reloading is covered in paragraph (e)(5) of this section) as follows:

(1) Calculate the unique physical volume (including pipelines, compressor case or cylinders, manifolds, suction bottles, discharge bottles, and vessels) between isolation valves determined by engineering estimates based on best available data.

(2) If the unique physical volume between isolation valves is greater than or equal to 50 cubic feet, retain logs of the number of blowdowns for each unique physical volume (including but not limited to compressors, vessels, pipelines, headers, fractionators, and tanks). Unique physical volumes smaller than 50 cubic feet are exempt from reporting under paragraph (i) of this section.

(3) Calculate the total annual venting emissions for unique volumes using either Equation W–14A or W–14B of this section.

$$E_{s,n} = N * \left(V \left(\frac{(459.67 + T_s) P_a}{(459.67 + T_a) P_s} \right) - V * C \right) \qquad \text{(Eq. W-14A)}$$

Where:

$E_{S,N}$ = Annual natural gas venting emissions at standard conditions from blowdowns in cubic feet.

N = Number of occurrences of blowdowns for each unique physical volume in calendar year.

V = Unique physical volume (including pipelines, compressors and vessels) between isolation valves in cubic feet.

C = Purge factor that is 1 if the unique physical volume is not purged or zero if the unique physical volume is purged using non-GHG gases.

T_s = Temperature at standard conditions (60°F).

T_a = Temperature at actual conditions in the unique physical volume (°F).

P_s = Absolute pressure at standard conditions (14.7 psia).

P_a = Absolute pressure at actual conditions in the unique physical volume (psia).

$$E_{s,n} = \sum_{p=1}^{N} \left[V \left(\frac{(459.67 + T_s)(P_{a,b,p} - P_{a,e,p})}{(459.67 + T_a) P_s} \right) \right] \qquad \text{(Eq. W-14B)}$$

Where:

$E_{s,n}$ = Annual natural gas venting emissions at standard conditions from blowdowns in cubic feet.

p = Individual occurrence of blowdown for the same unique physical volume.

N = Number of occurrences of blowdowns for each unique physical volume in the calendar year.

V = Total physical volume (including pipelines, compressors and vessels) between isolation valves in cubic feet for each blowdown ''p.''

T_s = Temperature at standard conditions (60°F).

T_a = Temperature at actual conditions in the unique physical volume (°F) for each blowdown ''p''.

P_s = Absolute pressure at standard conditions (14.7 psia).

$P_{a,b,p}$ = Absolute pressure at actual conditions in the unique physical volume (psia) at the beginning of the blowdown ''p''.

$P_{a,e,p}$ = Absolute pressure at actual conditions in the unique physical volume (psia) at the end of the blowdown ''p''; 0 if blowdown volume is purged using non-GHG gases.

(4) Calculate both CH_4 and CO_2 volumetric and mass emissions using calculations in paragraph (u) and (v) of this section.

(j) * * *

(1) *Calculation Methodology 1.* For separators with annual average daily throughput of oil greater than or equal to 10 barrels per day. * * *

* * * * *

(vii) Separator oil composition and Reid vapor pressure. If this data is not available, determine these parameters by selecting one of the methods

described under paragraph (j)(1) (vii) of this section.

* * * * *

(B) If separator oil composition and Reid vapor pressure data are available through your previous analysis, select the latest available analysis that is representative of produced crude oil or condensate from the sub-basin category.

(C) Analyze a representative sample of separator oil in each sub-basin category for oil composition and Reid vapor pressure using an appropriate standard method published by a consensus-based standards organization.

(2) *Calculation Methodology 2.* Calculate annual CH_4 and CO_2 emissions from onshore production storage tanks for wellhead gas-liquid separators with annual average daily throughput of oil greater than or equal to 10 barrels per day by assuming that all of the CH_4 and CO_2 in solution at separator temperature and pressure is emitted from oil sent to storage tanks. You may use an appropriate standard method published by a consensus-based standards organization if such a method exists or you may use an industry standard practice as described in § 98.234(b) to sample and analyze separator oil composition at separator pressure and temperature.

(3) *Calculation Methodology 3.* For wells with annual average daily oil production greater than or equal to 10 barrels per day that flow directly to atmospheric storage tanks without passing through a wellhead separator, calculate annual CH_4 and CO_2 emissions by either of the methods in paragraph (j)(3) of this section:

(i) If well production oil and gas compositions are available through your previous analysis, select the latest available analysis that is representative of produced oil and gas from the sub-basin category and assume all of the CH_4 and CO_2 in both oil and gas are emitted from the tank.

* * * * *

(4) *Calculation Methodology 4.* For wells with annual average daily oil production greater than or equal to 10 barrels per day that flow to a separator not at the well pad, calculate annual CH_4 and CO_2 emissions by either of the methods in paragraph (j)(4) of this section:

* * * * *

(5) * * *

$$E_{s,i} = EF_i * Count * 1000 \qquad \text{(Eq. W-15)}$$

Where:

* * * * *

EF_i = Population emission factor for separators or wells in thousand standard cubic feet per separator or well per year, for crude oil use 4.2 for CH_4 and 2.8 for CO_2 at 60 °F and 14.7 psia, and for gas condensate use 17.6 for CH_4 and 2.8 for CO_2 at 60 °F and 14.7 psia.

Count = Total number of separators or wells with throughput less than 10 barrels per day.

1,000 = Conversion to cubic feet

* * * * *

(8) * * *

$$E_{s,i} = \left(CF_n * \frac{E_n}{8760} * T_n\right) + \left(\frac{E_n}{8760} * (8760 - T_n)\right) \qquad \text{(Eq. W-16)}$$

Where:

* * * * *

E_n = Storage tank emissions as determined in Calculation Methodologies 1, 2, or 4 in paragraphs (j)(1), (j)(2) and (j)(4) of this section (with wellhead separators) in standard cubic feet per year.

* * * * *

8,760 = Conversion to hourly emissions.

* * * * *

(k) *Transmission storage tanks.* For vent stacks connected to one or more transmission condensate storage tanks, either water or hydrocarbon, without vapor recovery, in onshore natural gas transmission compression, calculate CH_4, CO_2 and N_2O annual emissions from compressor scrubber dump valve leakage as follows:

(1) Monitor the tank vapor vent stack annually for emissions using an optical gas imaging instrument according to methods set forth in § 98.234(a)(1) or by directly measuring the tank vent using a flow meter or high volume sampler according to methods in § 98.234(b) through (d) for a duration of 5 minutes, or a calibrated bag according to methods in § 98.234(b). Or you may annually monitor leakage through compressor scrubber dump valve(s) into the tank using an acoustic leak detection device according to methods set forth in § 98.234(a)(5).

(2) If the tank vapors from the vent stack are continuous for 5 minutes, or the acoustic leak detection device detects a leak, then use one of the following two methods in paragraph (k)(2) of this section to quantify annual emissions:

(i) Use a meter, such as a turbine meter, calibrated bag, or high flow sampler to estimate tank vapor volumes from the vent stack according to methods set forth in § 98.234(b) through (d). If you do not have a continuous flow measurement device, you may install a flow measuring device on the tank vapor vent stack. If the vent is directly measured for five minutes under paragraph § 98.233(k)(1) of this section to detect continuous leakage, this serves as the measurement.

* * * * *

(iv) Calculate GHG volumetric and mass emissions at standard conditions using calculations in paragraphs (t), (u), and (v) of this section, as applicable to the monitoring equipment used.

* * * * *

(4) Calculate annual emissions from storage tanks to flares as follows:

(i) Use the storage tank emissions volume and gas composition as determined in paragraphs (k)(1) through (k)(3) of this section.

(ii) Use the calculation methodology of flare stacks in paragraph (n) of this section to determine storage tank emissions sent to a flare.

(l) * * *

(1) Determine the gas to oil ratio (GOR) of the hydrocarbon production from oil well(s) tested. Determine the production rate from gas well(s) tested.

* * * * *

(3) Estimate venting emissions using Equation W–17A or Equation W–17B of this section.

$$E_{a,n} = GOR * FR * D \qquad \text{(Eq. W-17A)}$$

$$E_{a,n} = PR * D \qquad \text{(Eq. W-17B)}$$

Where:

$E_{a,n}$ = Annual volumetric natural gas emissions from well(s) testing in cubic feet under actual conditions.

GOR = Gas to oil ratio in cubic feet of gas per barrel of oil; oil here refers to hydrocarbon liquids produced of all API gravities.

FR = Flow rate in barrels of oil per day for the oil well(s) being tested.

PR = Average annual production rate in cubic feet per day for the gas well(s) being tested.

D = Number of days during the year, the well(s) is tested.

* * * * *

(m) * * *

(1) Determine the GOR of the hydrocarbon production from each well whose associated natural gas is vented or flared. If GOR from each well is not available, the GOR from a cluster of wells in the same sub-basin category shall be used.

* * * * *

(3) * * *

$$E_{a,n} = \sum_{q=1}^{y} \sum_{p=1}^{x} GOR_{p,q} * V_{p,q} \qquad \text{(Eq. W-18)}$$

Where:

$E_{a,n}$ = Annual volumetric natural gas emissions, at the facility level, from associated gas venting under actual conditions, in cubic feet.

$GOR_{p,q}$ = Gas to oil ratio, for well p in sub-basin q, in cubic feet of gas per barrel of oil; oil here refers to hydrocarbon liquids produced of all API gravities.

$V_{p,q}$ = Volume of oil produced, for well p in sub-basin q, in barrels in the calendar year during which associated gas was vented or flared.

x = Total number of wells in sub-basin that vent or flare associated gas.

y = Total number of sub-basins in a basin that contain wells that vent or flare associated gas.

* * * * *

(n) * * *

(2) * * *

(ii) For onshore natural gas processing, when the stream going to flare is natural gas, use the GHG mole percent in feed natural gas for all streams upstream of the de-methanizer or dew point control, and GHG mole percent in facility specific residue gas to transmission pipeline systems for all emissions sources downstream of the de-methanizer overhead or dew point control for onshore natural gas processing facilities. For onshore natural gas processing plants that solely fractionate a liquid stream, use the GHG mole percent in feed natural gas liquid for all streams.

(iii) For any applicable industry segment, when the stream going to the flare is a hydrocarbon product stream, such as methane, ethane, propane, butane, pentane-plus and mixed light hydrocarbons, then you may use a representative composition from the source for the stream determined by engineering calculation based on process knowledge and best available data.

* * * * *

(4) * * *

$$E_{a,CH4}(un-combusted) = V_a * (1-\eta) * X_{CH4} \qquad \text{(Eq. W-19)}$$

$$E_{a,CO2}(un-combusted) = V_a * X_{CO2} \qquad \text{(Eq. W-20)}$$

$$E_{a,CO2}(combusted) = \sum_{J=1}^{5} \left(\eta * V_a * Y_j * R_j\right) \qquad \text{(Eq. W-21)}$$

* * * * *

(9) If you operate and maintain a CEMS that has both a CO_2 concentration monitor and volumetric flow rate monitor, you must calculate only CO_2 emissions for the flare. You must follow the Tier 4 Calculation Methodology and all associated calculation, quality assurance, reporting, and recordkeeping requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources). If a CEMS is used to calculate flare stack emissions, the requirements specified in paragraphs (n)(1) through (n)(7) are not required. If a CO_2 concentration monitor and volumetric flow rate monitor are not available, you may elect to install a CO_2 concentration monitor and a volumetric flow rate monitor that comply with all of the requirements specified for the Tier 4 Calculation Methodology in subpart C of this part (General Stationary Fuel Combustion).

* * * * *

(11) If source types in § 98.233 use Equations W–19 through W–21 of this section, use estimate of emissions under actual conditions for the parameter, V_a, in these equations.

(o) * * *

(6) * * *

MT_m = Flow Measurements from all centrifugal compressor vents in each mode in (o)(1)(i) through (o)(1)(iii) of this section in standard cubic feet per hour.

* * * * *

(7) * * *

EF_i = Emission factor for GHG_i. Use 1.2×10^7 standard cubic feet per year per compressor for CH_4 and 5.30×10^5 thousand standard cubic feet per year per compressor for CO_2 at 60 °F and 14.7 psia.

* * * * *

(p) * * *

(7) * * *

(i) * * *

MT_m = Meter readings from all reciprocating compressor vents in each and mode, m, in standard cubic feet per hour.

* * * * *

(9) * * *

EF_i = Emission factor for GHG_i. Use 9.48×10^3 standard cubic feet per year per compressor for CH_4 and 5.27×10^2 standard cubic feet per year per compressor for CO_2 at 60 °F and 14.7 psia.

* * * * *

(q) *Leak detection and leaker emission factors.* You must use the methods described in § 98.234(a) to conduct leak detection(s) of equipment leaks from all component types listed in § 98.232(d)(7), (e)(7), (f)(5), (g)(3), (h)(4), and (i)(1). This paragraph (q) applies to component types in streams with gas content greater than 10 percent CH_4 plus CO_2 by weight. Component types in streams with gas content less than 10 percent CH_4 plus CO_2 by weight do not need to be reported. Tubing systems equal to or less than one half inch diameter are exempt from the requirements of this paragraph (q) and do not need to be reported. If equipment leaks are detected for sources listed in this paragraph (q), calculate equipment leak emissions per component type per reporting facility using Equations W–30A or W–30B of this section for each component type. Use Equation W–30A for industry segments listed in 98.230(a)(3)–(a)(7). Use Equation W–30B for industry segments listed in 98.230(a)(8).

$$E_{s,i} = GHG_i * \sum_{p=1}^{x} \left(EF * T_p \right) \qquad \text{(Eq. W-30A)}$$

$$E_{s,i} = GHG_i * \sum_{q=t-n+1}^{t} \sum_{p=1}^{x} \left(EF * T_{p,q} \right) \qquad \text{(Eq. W-30B)}$$

Where:

$E_{s,i}$ = Annual total volumetric GHG emissions at standard conditions from each component type in cubic feet, as specified in (q)(1) through (q)(8) of this section.

x = Total number of each component type.

EF = Leaker emission factor for specific component types listed in Table W–2 through Table W–7 of this subpart.

GHG_i = For onshore natural gas processing facilities, concentration of GHG_i, CH_4 or CO_2, in the total hydrocarbon of the feed natural gas; for onshore natural gas transmission compression and underground natural gas storage, GHG_i equals 0.975 for CH_4 and 1.1×10^{-2} for CO_2; for LNG storage and LNG import and export equipment, GHG_i equals 1 for CH_4 and 0 for CO_2; and for natural gas distribution, GHG_i equals 1 for CH_4 and 1.1×10^{-2} CO_2.

T_p = The total time the component, p, was found leaking and operational, in hours. If one leak detection survey is conducted, assume the component was leaking for the entire calendar year. If multiple leak detection surveys are conducted, assume that the component found to be leaking has been leaking since the previous survey (if not found leaking in the previous survey) or the beginning of the calendar year (if it was found leaking in the previous survey). For the last leak detection survey in the calendar year, assume that all leaking components continue to leak until the end of the calendar year.

t = Calendar year of reporting.

n = The number of years over which one complete cycle of leak detection is conducted over all the T–D transfer stations in a natural gas distribution facility; $0 < n \leq 5$. For the first (n–1) calendar years of reporting the summation in Equation W–30B should be for years that the data is available.

$T_{p,q}$ = The total time the component, p, was found leaking and operational, in hours, in year q. If one leak detection survey is conducted, assume the component was leaking for the entire period n. If multiple leak detection surveys are conducted, assume that the component found to be leaking has been leaking since the previous survey (if not found to be leaking in the previous survey) or the beginning of the calendar year (if it was found to be leaking in the previous survey). For the last leak detection survey in the cycle, assume that all leaking components continue to leak until the end of the cycle.

* * * * *

(8) Natural gas distribution facilities for above grade transmission-distribution transfer stations, shall use the appropriate default leaker emission factors listed in Table W–7 of this subpart for equipment leaks detected from connectors, block valves, control valves, pressure relief valves, orifice meters, regulators, and open ended lines. Leak detection at natural gas distribution facilities is only required at above grade stations that qualify as transmission-distribution transfer stations. Below grade transmission-distribution transfer stations and all metering-regulating stations that do meet the definition of transmission-distribution transfer stations are not required to perform component leak detection under this section.

(i) Natural gas distribution facilities may choose to conduct leak detection at the T–D transfer stations over multiple years, not exceeding a five year period to cover all T–D transfer stations. If the facility chooses to use the multiple year option then the number of T–D transfer stations that are monitored in each year should be approximately equal across all years in the cycle without monitoring the same station twice during the multiple year survey.

(ii) [Reserved]

(r) *Population count and emission factors.* This paragraph applies to emissions sources listed in § 98.232 (c)(21), (f)(5), (g)(3), (h)(4), (i)(2), (i)(3), (i)(4), (i)(5), and (i)(6) on streams with gas content greater than 10 percent CH_4 plus CO_2 by weight. Emissions sources in streams with gas content less than 10 percent CH_4 plus CO_2 by weight do not need to be reported. Tubing systems equal to or less than one half inch diameter are exempt from the requirements of paragraph (r) of this section and do not need to be reported. Calculate emissions from all sources listed in this paragraph using Equation W–31 of this section.

* * * * *

$E_{s,i}$ = Annual volumetric GHG emissions at standard conditions from each component type in cubic feet.

$Count_s$ = Total number of this type of emission source at the facility. For onshore petroleum and natural gas production, average component counts are provided by major equipment piece in Tables W–1B and Table W–1C of this subpart. Use average component counts as appropriate for operations in Eastern and Western U.S., according to Table W–1D of this subpart. Underground natural gas storage shall count the components listed for population emission factors in Table W–4. LNG Storage shall count the number of vapor recovery compressors. LNG import and export shall count the number of vapor recovery compressors. Natural gas distribution shall count the

meter/regulator runs as described in paragraph (r)(6) of this section.

EF = Population emission factor for the specific component type, as listed in Table W–1A and Tables W–3 through Table W–7 of this subpart. Use appropriate population emission factor for operations in Eastern and Western U.S., according to Table W–1D of this subpart. EF for meter/regulator runs at above grade metering-regulating stations is determined in Equation W–32 of this section.

GHG_i = For onshore petroleum and natural gas production facilities, concentration of GHG_i, CH_4 or CO_2, in produced natural gas as defined in paragraph (u)(2) of this section; for onshore natural gas transmission compression and underground natural gas storage, GHG_i equals 0.975 for CH_4 and 1.1×10^{-2} for CO_2; for LNG storage and LNG import and export equipment, GHG_i equals 1 for CH_4 and 0 for CO_2; and for natural gas distribution, GHG_i equals 1 for CH_4 and 1.1×10^{-2} CO_2.

T_s = Average estimated time that each component type associated with the equipment leak emission was operational in the calendar year, in hours, using engineering estimate based on best available data.

* * * * *

(2) * * *

(i) * * *

(A) Count all major equipment listed in Table W–1B and Table W–1C of this subpart. For meters/piping, use one meters/piping per well-pad.

* * * * *

(6) * * *

(i) Below grade metering-regulating stations; distribution mains; and distribution services, shall use the appropriate default population emission factors listed in Table W–7 of this subpart. Below grade T–D transfer stations shall use the emission factor for below grade metering-regulating stations.

(ii) Emissions from all above grade metering-regulating stations (including above grade TD transfer stations) shall be calculated by applying the emission factor calculated in Equation W–32 and the total count of meter/regulator runs at all above grade metering-regulating stations (inclusive of TD transfer stations) to Equation W–31. The facility wide emission factor in Equation W–32 will be calculated by using the total volumetric GHG emissions at standard conditions for all equipment leak sources calculated in Equation W–30B in paragraph (q)(8) of this section and the count of meter/regulator runs located at above grade transmission-distribution transfer stations that were monitored over the years that constitute one complete cycle as per (q)(8)(i) of this section. A meter on a regulator run is considered one meter or regulator run. Reporters that do not have above grade T–D transfer stations shall report a count of above grade metering-regulating stations only and do not have to comply with § 98.236(c)(16)(xix).

$$EF = \frac{E_{s,i} \div 8760}{Count} \qquad \text{(Eq. W-32)}$$

Where:

EF = Facility emission factor for a meter/regulator run per component type at above grade metering-regulating for GHG_i in cubic feet per meter/regulator run per hour.

$E_{s,i}$ = Annual volumetric GHG i emissions, CO_2 or CH_4 at standard condition from each component type at all above grade TD transfer stations, from Equation W–30B.

Count = Total number of meter/regulator runs at all TD transfer stations that were monitored over the years that constitute one complete cycle as per (q)(8)(i) of this section.

8760 = Conversion to hourly emissions

* * * * *

(t) *Volumetric emissions.* Calculate volumetric emissions at standard conditions as specified in paragraphs (t)(1) or (2) of this section, with actual pressure and temperature determined by engineering estimates based on best available data unless otherwise specified.

(1) Calculate natural gas volumetric emissions at standard conditions using actual natural gas emission temperature and pressure, and Equation W–33 of this section.

* * * * *

T_s = Temperature at standard conditions (60 °F).

* * * * *

P_s = Absolute pressure at standard conditions (14.7 psia).

* * * * *

(2) Calculate GHG volumetric emissions at standard conditions using actual GHG emissions temperature and pressure, and Equation W–34 of this section.

* * * * *

T_s = Temperature at standard conditions (60 °F).

* * * * *

P_s = Absolute pressure at standard conditions (14.7 psia).

* * * * *

(3) Reporters using 68 °F for standard temperature may use the ratio 519.67/527.67 to convert volumetric emissions from 68 °F to 60 °F.

(u) *GHG volumetric emissions.* Calculate GHG volumetric emissions at standard conditions as specified in paragraphs (u)(1) and (2) of this section, with mole fraction of GHGs in the natural gas determined by engineering estimate based on best available data unless otherwise specified.

* * * * *

(2) For Equation W–35 of this section, the mole fraction, M_i, shall be the annual average mole fraction for each sub-basin category or facility, as specified in paragraphs (u)(2)(i) through (vii) of this section.

(i) GHG mole fraction in produced natural gas for onshore petroleum and natural gas production facilities. If you have a continuous gas composition analyzer for produced natural gas, you must use an annual average of these values for determining the mole fraction. If you do not have a continuous gas composition analyzer, then you must use an annual average gas composition based on your most recent available analysis of the sub-basin category or facility, as applicable to the emission source.

(ii) GHG mole fraction in feed natural gas for all emissions sources upstream of the de-methanizer or dew point control and GHG mole fraction in facility specific residue gas to transmission pipeline systems for all emissions sources downstream of the de-methanizer overhead or dew point control for onshore natural gas processing facilities. For onshore natural gas processing plants that solely fractionate a liquid stream, use the GHG mole percent in feed natural gas liquid for all streams. If you have a continuous gas composition analyzer on feed natural gas, you must use these values for determining the mole fraction. If you do not have a continuous gas composition analyzer, then annual samples must be taken according to methods set forth in § 98.234(b).

(iii) GHG mole fraction in transmission pipeline natural gas that passes through the facility for the onshore natural gas transmission compression industry segment. You may use a default 95 percent methane and 1 percent carbon dioxide fraction for GHG mole fraction in natural gas.

(iv) GHG mole fraction in natural gas stored in the underground natural gas storage industry segment. You may use a default 95 percent methane and 1 percent carbon dioxide fraction for GHG mole fraction in natural gas.

(v) GHG mole fraction in natural gas stored in the LNG storage industry segment. You may use a default 95 percent methane and 1 percent carbon dioxide fraction for GHG mole fraction in natural gas.

(vi) GHG mole fraction in natural gas stored in the LNG import and export industry segment. For export facilities that receive gas from transmission

pipelines, you may use a default 95 percent methane and 1 percent carbon dioxide fraction for GHG mole fraction in natural gas.

(vii) GHG mole fraction in local distribution pipeline natural gas that passes through the facility for natural gas distribution facilities. You may use a default 95 percent methane and 1 percent carbon dioxide fraction for GHG mole fraction in natural gas.

(v) *GHG mass emissions.* Calculate GHG mass emissions in carbon dioxide equivalent by converting the GHG volumetric emissions at standard conditions into mass emissions using Equation W–36 of this section.

$$Mass_i = E_{s,i} * \rho_i * GWP * 10^{-3} \qquad \text{(Eq. W-36)}$$

Where:

$Mass_i$ = GHG_i (either CH_4, CO_2, or N_2O) mass emissions in metric tons CO_2e.

$E_{s,i}$ = GHG_i (either CH_4, CO_2, or N_2O) volumetric emissions at standard conditions, in cubic feet.

ρ_i = Density of GHG_i. Use 0.0526 kg/ft^3 for CO_2 and N_2O, and 0.0422 kg/ft^3 for CH_4 at 60 °F and 14.7 psia.

* * * * *

(w) * * *

(3) * * *

$$Mass_{CO2} = N * V_v * R_c * GHG_{CO2} * 10^{-3} \qquad \text{(Eq. W-37)}$$

Where:

$Mass_{CO2}$ = Annual EOR injection gas venting emissions in metric tons from blowdowns.

* * * * *

GHG_{CO2} = Mass fraction of CO_2 in critical phase injection gas.

* * * * *

(x) * * *

(2) * * *

$$Mass_{CO2} = S_{hl} * V_{hl} \qquad \text{(Eq. W-38)}$$

Where:

$Mass_{CO2}$ = Annual CO_2 emissions from CO_2 retained in hydrocarbon liquids produced through EOR operations beyond tankage, in metric tons.

* * * * *

(z) *Onshore petroleum and natural gas production and natural gas distribution combustion emissions.* Calculate CO_2, CH_4, and N_2O combustion-related emissions from stationary or portable equipment, except as specified in paragraph (z)(3) and (z)(4) of this section, as follows:

(1) If a fuel combusted in the stationary or portable equipment is listed in Table C–1 of subpart C of this part, or is a blend containing one or more fuels listed in Table C–1, calculate emissions according to (z)(1)(i). If the fuel combusted is natural gas and is of pipeline quality specification and has a minimum high heat value of 950 Btu per standard cubic foot, use the calculation methodology described in (z)(1)(i) and you may use the emission factor provided for natural gas as listed in Table C–1. If the fuel is natural gas, and is not pipeline quality or has a high heat value of less than 950 Btu per standard cubic feet, calculate emissions according to (z)(2). If the fuel is field gas, process vent gas, or a blend containing field gas or process vent gas, calculate emissions according to (z)(2).

(i) For fuels listed in Table C–1 or a blend containing one or more fuels listed in Table C–1, calculate CO_2, CH_4, and N_2O emissions according to any Tier listed in subpart C of this part. You must follow all applicable calculation requirements for that tier listed in 98.33, any monitoring or QA/QC requirements listed for that tier in 98.34, any missing data procedures specified in 98.35, and any recordkeeping requirements specified in 98.37.

(ii) Emissions from fuel combusted in stationary or portable equipment at onshore natural gas and petroleum production facilities and at natural gas distribution facilities will be reported according to the requirements specified in 98.236(c)(19) and not according to the reporting requirements specified in subpart C of this part.

(2) For fuel combustion units that combust field gas, process vent gas, a blend containing field gas or process vent gas, or natural gas that is not of pipeline quality or that has a high heat value of less than 950 Btu per standard cubic feet, calculate combustion emissions as follows:

(i) You may use company records to determine the volume of fuel combusted in the unit during the reporting year.

(ii) If you have a continuous gas composition analyzer on fuel to the combustion unit, you must use these compositions for determining the concentration of gas hydrocarbon constituent in the flow of gas to the unit. If you do not have a continuous gas composition analyzer on gas to the combustion unit, you must use the appropriate gas compositions for each stream of hydrocarbons going to the combustion unit as specified in the applicable paragraph in (u)(2) of this section.

(iii) Calculate GHG volumetric emissions at actual conditions using Equations W–39A and W–39B of this section:

$$E_{a,CO2} = (V_a * Y_{CO2}) + \eta * \sum_{j=1}^{5} V_a * Y_j * R_j \qquad \text{(Eq. W-39A)}$$

$$E_{a,CH4} = V_a * (1-\eta) * Y_{CH4} \qquad \text{(Eq. W-39B)}$$

Where:

E_{CO2} = Contribution of annual CO_2 emissions from portable or stationary fuel combustion sources in cubic feet, under actual conditions.

V_a = Volume of gas sent to combustion unit in cubic feet, during the year.

Y_{CO2} = Concentration of CO_2 constituent in gas sent to combustion unit.

$E_{a,CH4}$ = Contribution of annual CH_4 emissions from portable or stationary fuel combustion sources in cubic feet, under actual conditions.

η = Fraction of gas combusted for portable and stationary equipment determined using engineering estimation. For internal combustion devices, a default of 0.995 can be used.

Y_j = Concentration of gas hydrocarbon constituents j (such as methane, ethane, propane, butane, and pentanes plus) in gas sent to combustion unit.

R_j = Number of carbon atoms in the gas hydrocarbon constituent j; 1 for methane, 2 for ethane, 3 for propane, 4 for butane, and 5 for pentanes plus, in gas sent to combustion unit.

Y_{CH4} = Concentration of methane constituent in gas sent to combustion unit.

* * * * *

(vi) Calculate N_2O mass emissions using Equation W–40 of this section.

$$Mass_{N2O} = \left(1 \times 10^{-3}\right) \times Fuel \times HHV \times EF \times GWP \qquad \text{(Eq. W-40)}$$

Where:

$Mass_{N2O}$ = Annual N_2O emissions from the combustion of a particular type of fuel (metric tons CO_2e).

* * * * *

HHV = For the high heat value for field gas or process vent gas, use 1.235×10^{-3} mmBtu/scf for HHV.

* * * * *

GWP = Global warming potential, as listed in Table A–1 of subpart A of this part.

(3) External fuel combustion sources with a rated heat capacity equal to or less than 5 mmBtu/hr do not need to report combustion emissions or include these emissions for threshold determination in § 98.231(a). You must report the type and number of each external fuel combustion unit.

(4) Internal fuel combustion sources, not compressor-drivers, with a rated heat capacity equal to or less than 1 mmBtu/hr (or the equivalent of 130 horsepower), do not need to report combustion emissions or include these emissions for threshold determination in § 98.231(a). You must report the type and number of each internal fuel combustion unit.

■ 7. Section 98.234 is amended by:

■ a. Revising paragraphs (a)(1), (a)(2), and (a)(5).

■ b. Removing and reserving paragraph (a)(4).

■ c. Revising paragraph (c) introductory text and paragraph (d)(3).

■ d. Revising Equation W–41 of paragraph (e).

■ e. Adding new paragraph (g).

§ 98.234 Monitoring and QA/QC requirements.

* * * * *

(a) * * *

(1) *Optical gas imaging instrument.* Use an optical gas imaging instrument for equipment leak detection in accordance with 40 CFR part 60, subpart A, § 60.18 of the *Alternative work practice for monitoring equipment leaks,* § 60.18(i)(1)(i); § 60.18(i)(2)(i) except that the monitoring frequency shall be annual using the detection sensitivity level of 60 grams per hour as stated in 40 CFR Part 60, subpart A, Table 1: *Detection Sensitivity Levels;* § 60.18(i)(2)(ii) and (iii) except the gas chosen shall be methane, and § 60.18(i)(2)(iv) and (v); § 60.18(i)(3); § 60.18(i)(4)(i) and (v); including the requirements for daily instrument checks and distances, and excluding requirements for video records. Any emissions detected by the optical gas imaging instrument is a leak unless screened with Method 21 (40 CFR part 60, appendix A–7) monitoring, in which case 10,000 ppm or greater is designated a leak. In addition, you must operate the optical gas imaging instrument to image the source types required by this subpart in accordance with the instrument manufacturer's operating parameters. Unless using methods in paragraph (a)(2) of this section, an optical gas imaging instrument must be used for all source types that are inaccessible and cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) *Method 21.* Use the equipment leak detection methods in 40 CFR part 60, appendix A–7, Method 21. If using Method 21 monitoring, if an instrument reading of 10,000 ppm or greater is measured, a leak is detected. Inaccessible emissions sources, as defined in 40 CFR part 60, are not exempt from this subpart. Owners or operators must use alternative leak detection devices as described in paragraph (a)(1) or (a)(2) of this section to monitor inaccessible equipment leaks or vented emissions.

* * * * *

(5) *Acoustic leak detection device.* Use the acoustic leak detection device to detect through-valve leakage. When using the acoustic leak detection device to quantify the through-valve leakage, you must use the instrument manufacturer's calculation methods to quantify the through-valve leak. When using the acoustic leak detection device, if a leak of 3.1 scf per hour or greater is calculated, a leak is detected. In addition, you must operate the acoustic leak detection device to monitor the source valves required by this subpart in accordance with the instrument manufacturer's operating parameters. Acoustic stethoscope type devices designed to detect through valve leakage when put in contact with the valve body and that provide an audible leak signal but do not calculate a leak rate can be used to identify non-leakers with subsequent measurement required to calculate the rate if through-valve leakage is identified. Leaks are reported if a leak rate of 3.1 scf per hour or greater is measured.

* * * * *

(c) Use calibrated bags (also known as vent bags) only where the emissions are at near-atmospheric pressures and below the maximum temperature specified by the vent bag manufacturer such that the bag is safe to handle. The bag opening must be of sufficient size that the entire emission can be tightly encompassed for measurement till the bag is completely filled.

* * * * *

(d) * * *

(3) Estimate natural gas volumetric emissions at standard conditions using calculations in § 98.233(t). Estimate CH_4 and CO_2 volumetric and mass emissions from volumetric natural gas emissions using the calculations in § 98.233(u) and (v).

* * * * *

(e) * * *

$$p = \frac{RT}{V_m - b} - \frac{a\alpha}{V_m^2 + 2bV_m - b^2} \qquad \text{(Eq. W-41)}$$

Where:
p = Absolute pressure.
R = Universal gas constant.
T = Absolute temperature.
V_m = Molar volume.

$$a = \frac{0.45724 R^2 T_c^2}{p_c}$$

$$b = \frac{0.7780 R T_c}{p_c}$$

$$\alpha = \left(1 + \left(0.37464 + 1.54226\omega - 0.26992\omega^2\right)\left(1 - \sqrt{\frac{T}{T_c}}\right)\right)^2$$

Where:
ω = Acentric factor of the species.
T_c = Critical temperature.
P_c = Critical pressure.

* * * * *

(g) For the purposes of fulfilling requirements in 40 CFR 98.233(f) and (g) which require measurements to be taken every other year beginning in the first year of data collection, reporters have the option of taking the first measurement in 2012 to satisfy the requirements for the 2011–2012 data collection cycle.

■ 8. Section 98.236 is amended by:
■ a. Revising paragraphs (a) introductory text and (a)(8).
■ b. Revising paragraph (b).
■ c. Revising paragraphs (c) introductory text, (c)(1)(iv), (c)(2)(ii), and (c)(3)(ii) through (c)(3)(v); and adding paragraphs (c)(3)(vi) and (vii).
■ d. Revising paragraphs (c)(4)(i)(H) and (C)(4)(i)(J); and adding paragraphs (c)(4)(i)(K), and (c)(4)(i)(L).
■ e. Revising paragraphs (c)(4)(ii)(B) and (c)(4)(ii)(C); and adding paragraph (c)(4)(ii)(D).
■ f. Revising paragraph (c)(4)(iii)(B).
■ g. Revising paragraph (c)(5).
■ h. Revising paragraphs (c)(6) introductory text, and (c)(6)(i).
■ i. Revising paragraph (c)(6)(ii)(B), (c)(6)(ii)(D) and adding paragraph (c)(6)(ii)(E).
■ j. Revising paragraph (c)(7).
■ k. Revising paragraphs (c)(8)(i) introductory text and (c)(8)(i)(J); and adding paragraphs (c)(8)(i)(K) and (c)(8)(i)(L).
■ l. Revising paragraphs (c)(8)(ii) introductory text, (c)(8)(ii)(D), and (c)(8)(ii)(G); and adding paragraphs (c)(8)(ii)(H) and (c)(8)(ii)(I).
■ m. Revising paragraphs (c)(8)(iii) introductory text and (c)(8)(iii)(F); and adding paragraphs (c)(8)(iii)(G) and (c)(8)(iii)(H).
■ n. Adding paragraph (c)(8)(iv)(B).
■ o. Revising paragraphs (c)(9) introductory text and (c)(9)(i) ; and adding paragraphs (c)(9)(ii) (c)(9)(iii).
■ p. Revising paragraphs (c)(10) introductory text and (c)(10)(iv); and adding paragraph (c)(10)(v).
■ q. Revising paragraph (c)(11) introductory text and (c)(11)(iii); and adding paragraph (c)(11)(iv).
■ r. Revising paragraph (c)(12)(vi) and adding paragraphs (c)(12)(vii) through (c)(12)(xi).
■ s. Revising paragraphs (c)(15) introductory text, (c)(15)(i)(A), (c)(15)(i)(B) and (c)(15)(i)(C).
■ t. Revising paragraphs (c)(15)(ii)(A) through (c)(15)(ii)(C).
■ u. Revising paragraph (c)(16).
■ v. Revising paragraph (c)(17)(v).
■ w. Revising paragraphs (c)(18) introductory text and paragraph (c)(18)(iii).
■ x. Revising paragraphs (c)(19)(iii), (c)(19)(v), (c)(19)(vi), and (c)(19)(vii).
■ y. Adding paragraph (e).

The revisions read as follows:

§ 98.236 Data Reporting Requirements.

* * * * *

(a) Report annual emissions in metric tons of CO_2e for each GHG separately for each of the industry segments listed in paragraphs (a)(1) through (8) of this section.

* * * * *

(8) Natural gas distribution.

(b) For offshore petroleum and natural gas production, report emissions of CH_4, CO_2, and N_2O as applicable to the source type (in metric tons CO_2e per year at standard conditions) individually for all of the emissions source types listed in the most recent BOEMRE study.

(c) Report the information listed in this paragraph for each applicable source type in metric tons of CO_2e for each GHG. If a facility operates under more than one industry segment, each piece of equipment should be reported under the unit's respective majority use segment. When a source type listed under this paragraph routes gas to flare, separately report the emissions that were vented directly to the atmosphere without flaring, and the emissions that resulted from flaring the gas. Both the vented and flared emissions will be reported under the respective source type and not under the flare source type.

(1) * * *

(iv) Report annual CO_2 and CH_4 emissions at the facility level, expressed in metric tons CO_2e for each gas, for each of the following pieces of equipment: high bleed pneumatic devices; intermittent bleed pneumatic devices; low bleed pneumatic devices.

(2) * * *

(ii) Report annual CO_2 and CH_4 emissions at the facility level, expressed in metric tons CO_2e for each gas, for all natural gas driven pneumatic pumps combined.

(3) * * *

(ii) For Calculation Methodology 1 and Calculation Methodology 2 of § 98.233(d), annual average fraction of CO_2 content in the vent from the acid gas removal unit (refer to § 98.233(d)(6)).

(iii) For Calculation Methodology 3 of § 98.233(d), annual average volume fraction of CO_2 content of natural gas into and out of the acid gas removal unit (refer to § 98.233(d)(7) and (d)(8)).

(iv) Report the annual quantity of CO_2, expressed in metric tons CO_2e, that was recovered from the AGR unit and transferred outside the facility, under subpart PP of this part.

(v) Report annual CO_2 emissions for the AGR unit, expressed in metric tons CO_2e.

(vi) For the onshore natural gas processing industry segment only, report a unique name or ID number for the AGR unit.

(vii) An indication of which calculation methodology was used for the AGR.

(4) * * *

(i) * * *

(H) Concentration of CH_4 and CO_2 in wet natural gas.

* * * * *

(J) For each glycol dehydrator, report annual CO_2 and CH_4 emissions that resulted from venting gas directly to the atmosphere, expressed in metric tons CO_2e for each gas.

(K) For each glycol dehydrator, report annual CO_2, CH_4, and N_2O emissions that resulted from flaring process gas from the dehydrator, expressed in metric tons CO_2e for each gas.

(L) For the onshore natural gas processing industry segment only, report a unique name or ID number for glycol dehydrator.

(ii) * * *

(B) Which vent gas controls are used (refer to § 98.233(e)(3) and (e)(4)).

(C) Report annual CO_2 and CH_4 emissions at the facility level that resulted from venting gas directly to the atmosphere, expressed in metric tons CO_2e for each gas, combined for all glycol dehydrators with annual average daily throughput of less than 0.4 MMscfd.

(D) Report annual CO_2, CH_4, and N_2O emissions at the facility level that resulted from the flaring of process gas, expressed in metric tons CO_2e for each gas, combined for all glycol dehydrators with annual average daily throughput of less than 0.4 MMscfd.

(iii) * * *

(B) Report annual CO_2 and CH_4 emissions at the facility level, expressed in metric tons CO_2e for each gas, for all absorbent desiccant dehydrators combined.

(5) For well venting for liquids unloading, report the following:

(i) For Calculation Methodology 1 (refer to Equation W–7 of § 98.233), report the following for each tubing diameter group and pressure group combination within each sub-basin category:

(A) Count of wells vented to the atmosphere for liquids unloading.

(B) Count of plunger lifts. Whether the selected well from the tubing diameter and pressure group combination had a plunger lift (yes/no).

(C) Cumulative number of unloadings vented to the atmosphere.

(D) Average flow rate of the measured well venting in cubic feet per hour (refer to § 98.233(f)(1)(i)(A)).

(E) Internal casing diameter or internal tubing diameter in inches, where applicable, and well depth of each well, in feet, selected to represent emissions in that tubing size and pressure combination.

(F) Casing pressure, in psia, of each well selected to represent emissions in that tubing size group and pressure group combination that does not have a plunger lift.

(G) Tubing pressure, in psia, of each well selected to represent emissions in a tubing size group and pressure group combination that has a plunger lift.

(H) Report annual CO_2 and CH_4 emissions, expressed in metric tons CO_2e for each gas.

(ii) For Calculation Methodologies 2 and 3 (refer to Equation W–8 and W–9 of § 98.233), report the following for each sub-basin category:

(A) Count of wells vented to the atmosphere for liquids unloading.

(B) Count of plunger lifts.

(C) Cumulative number of unloadings vented to the atmosphere.

(D) Average internal casing diameter, in inches, of each well, where applicable.

(E) Report annual CO_2 and CH_4 emissions, expressed in metric tons CO_2e for each GHG gas.

(6) For well completions and workovers, report the following for each sub-basin category:

(i) For gas well completions and workovers with hydraulic fracturing by sub-basin and well type (horizontal or vertical) combination (refer to Equation W–10A and W–10B of § 98.233), report the following:

(A) Total count of completions in calendar year.

(B) When using Equation W–10A, measured flow rate of backflow during well completion in standard cubic feet per hour.

(C) Total count of workovers in calendar year that flare gas or vent gas to the atmosphere.

(D) When using Equation W–10A, measured flow rate of backflow during well workover in standard cubic feet per hour.

(E) When using Equation W–10A, total number of days of backflow from all wells during completions.

(F) When using Equation W–10A, total number of days of backflow from all wells during workovers.

(G) Report number of completions employing purposely designed equipment that separates natural gas from the backflow and the amount of natural gas, in standard cubic feet, recovered using engineering estimate based on best available.

(H) Report number of workovers employing purposely designed equipment that separates natural gas from the backflow and the amount of natural gas, in standard cubic feet, recovered using engineering estimate based on best available data.

(I) Annual CO_2 and CH_4 emissions that resulted from venting gas directly to the atmosphere, expressed in metric tons CO_2e for each gas.

(J) Annual CO_2, CH_4, and N_2O emissions that resulted from flares, expressed in metric tons CO_2e for each gas.

(ii) * * *

(B) Total count of workovers in calendar year that flare gas or vent gas to the atmosphere.

* * * * *

(D) Annual CO_2 and CH_4 emissions that resulted from venting gas directly to the atmosphere, expressed in metric tons CO_2e for each gas.

(E) Annual CO_2, CH_4, and N_2O emissions that resulted from flares, expressed in metric tons CO_2e for each gas.

(7) For blowdown vent stack emission source, (refer to Equation W–14A and Equation W–14B of § 98.233), report the following:

(i) For each unique physical volume that is blown down more than once during the calendar year, report the following:

(A) Total number of blowdowns for each unique physical volume in the calendar year.

(B) Annual CO_2 and CH_4 emissions, for each unique physical blowdown volume, expressed in metric tons CO_2e for each gas.

(C) A unique name or ID number for the unique physical volume.

(ii) For all unique volumes that are blown down once during the calendar year, report the following:

(A) Total number of blowdowns for all unique physical volumes in the calendar year.

(B) Annual CO_2 and CH_4 emissions from all unique physical volumes as an aggregate per facility, expressed in metric tons CO_2e for each gas.

(8) * * *

(i) For wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of § 98.233(j), report the following by sub-basin category, unless otherwise specified:

* * * * *

(J) Annual CO_2 and CH_4 emissions that resulted from venting gas to the atmosphere, expressed in metric tons CO_2e for each gas, for all wellhead gas-liquid separators or storage tanks using Calculation Methodology 1, and for all wellhead gas-liquid separators or storage tanks using Calculation Methodology 2 of § 98.233(j).

(K) Annual CO_2 and CH_4 gas quantities that were recovered, expressed in metric tons CO_2e for each gas, for all wellhead gas-liquid separators or storage tanks using Calculation Methodology 1, and for all wellhead gas-liquid separators or storage tanks using Calculation Methodology 2 of § 98.233(j).

(L) Annual CO_2, CH_4, and N_2O emissions that resulted from flaring gas, expressed in metric tons CO_2e for each gas, for all wellhead gas-liquid separators or storage tanks using Calculation Methodology 1, and for all wellhead gas-liquid separators or storage tanks using Calculation Methodology 2 of § 98.233(j).

(ii) For wells with oil production greater than or equal to 10 barrels per day, using Calculation Methodology 3 and 4 of § 98.233(j), report the following by sub-basin category:

* * * * *

(D) Sales oil API gravity range for wells in (c)(8)(ii)(B) and (c)(8)(ii)(C) of this section, in degrees.

* * * * *

(G) Annual CO_2 and CH_4 emissions that resulted from venting gas to the atmosphere, expressed in metric tons CO_2e for each gas, at the sub-basin level for Calculation Methodology 3 or 4 of § 98.233(j).

(H) Annual CO_2 and CH_4 gas quantities that were recovered, expressed in metric tons CO_2e for each gas, at the sub-basin level for Calculation Methodology 3 or 4 of § 98.233(j).

(I) Annual CO_2, CH_4, and N_2O emissions that resulted from flaring gas, expressed in metric tons CO_2e for each gas, at the sub-basin level for Calculation Methodology 3 and 4 of § 98.233(j).

(iii) For wellhead gas-liquid separators and wells with throughput less than 10 barrels per day, using Calculation Methodology 5 of § 98.233(j) Equation W–15 of § 98.233, report the following:

* * * * *

(F) Annual CO_2 and CH_4 emissions that resulted from venting gas to the atmosphere, expressed in metric tons CO_2e for each gas, at the sub-basin level for Calculation Methodology 5 of § 98.233(j).

(G) Annual CO_2 and CH_4 gas quantities that were recovered, expressed in metric tons CO_2e for each gas, at the sub-basin level for Calculation Methodology 5 of § 98.233(j).

(H) Annual CO_2, CH_4, and N_2O emissions that resulted from flaring gas, expressed in metric tons CO_2e for each gas, at the sub-basin level for Calculation Methodology 5 of § 98.233(j).

(iv) * * *

(B) Annual CO_2 and CH_4 emissions that resulted from venting gas to the atmosphere, expressed in metric tons CO_2e for each gas, at the sub-basin level for improperly functioning dump valves.

(9) For transmission tank emissions identified using optical gas imaging instrument per § 98.234(a) (refer to § 98.233(k)), or acoustic leak detection of scrubber dump valves, report the following:

(i) For each vent stack, report annual CO_2 and CH_4 emissions that resulted from venting gas directly to the atmosphere, expressed in metric tons CO_2e for each gas.

(ii) For each transmission storage tank, report annual CO_2, CH_4, and N_2O emissions that resulted from flaring process gas from the transmission storage tank, expressed in metric tons CO_2e for each gas.

(iii) A unique name or ID number for the vent stack monitored according to 40 CFR 98.233(k).

(10) For well testing venting and flaring (refer to Equation W–17A or W–17B of § 98.233), report the following:

* * * * *

(iv) Report annual CO_2 and CH_4 emissions at the facility level, expressed in metric tons CO_2e for each gas, emissions from well testing venting.

(v) Report annual CO_2, CH_4, and N_2O emissions at the facility level, expressed in metric tons CO_2e for each gas, emissions from well testing flaring.

(11) For associated natural gas venting and flaring (refer to Equation W–18 of § 98.233), report the following for each basin:

* * * * *

(iii) Report annual CO_2 and CH_4 emissions at the facility level, expressed in metric tons CO_2e for each gas, emissions from associated natural gas venting.

(iv) Report annual CO_2, CH_4, and N_2O emissions at the facility level, expressed in metric tons CO_2e for each gas, emissions from associated natural gas flaring.

(12) * * *

(vi) Report uncombusted CH_4 emissions, in metric tons CO_2e (refer to Equation W–19 of § 98.233).

(vii) Report uncombusted CO_2 emissions, in metric tons CO_2e (refer to Equation W–20 of § 98.233).

(viii) Report combusted CO_2 emissions, in metric tons CO_2e (refer to Equation W–21 of § 98.233).

(ix) Report N_2O emissions, in metric tons CO_2e.

(x) For the natural gas processing industry segment, a unique name or ID number for the flare stack.

(xi) In the case that a CEMS is used to measure CO_2 emissions for the flare stack, indicate that a CEMS was used in the annual report and report the combusted CO_2 and uncombusted CO_2 as a combined number.

* * * * *

(15) For each component type (major equipment type for onshore production) that uses emission factors for estimating emissions (refer to § 98.233(q) and (r))

(i) * * *

(A) Total count of leaks found in each complete survey listed by date of survey and each component type for which there is a leaker emission factor in Tables W–2, W–3, W–4, W–5, W–6, and W–7 of this subpart.

(B) For onshore natural gas processing, range of concentrations of CH_4 and CO_2 (refer to Equation W–30 of § 98.233).

(C) Annual CO_2 and CH_4 emissions, in metric tons CO_2e for each gas (refer to parameter GHG_i in Equation W–30 of § 98.233), by component type.

(ii) * * *

(A) For source categories § 98.230(a)(4), (a)(5), (a)(6), (a)(7), and (a)(8), total count for each component type in Tables W–2, W–3, W–4, W–5, and W–6 of this subpart for which there is a population emission factor, listed by major heading and component type.

(B) For onshore production (refer to § 98.230 paragraph (a)(2)), total count for each type of major equipment in Table W–1B and Table W–1C of this subpart, by facility.

(C) Annual CO_2 and CH_4 emissions, in metric tons CO_2e for each gas (refer to Equation W–31 of § 98.233), by component type.

(16) For local distribution companies, report the following:

(i) Total number of above grade T–D transfer stations in the facility.

(ii) Number of years over which all T–D transfer stations will be monitored at least once.

(iii) Number of T–D stations monitored in calendar year.

(iv) Total number of below grade T–D transfer stations in the facility.

(v) Total number of above grade metering-regulating stations (this count will include above grade T–D transfer stations) in the facility.

(vi) Total number of below grade metering-regulating stations (this count will include below grade T–D transfer stations) in the facility.

(vii) [Reserved]

(viii) Leak factor for meter/regulator run developed in Equation W–32 of § 98.233.

(ix) Number of miles of unprotected steel distribution mains.

(x) Number of miles of protected steel distribution mains.

(xi) Number of miles of plastic distribution mains.

(xii) Number of miles of cast iron distribution mains.

(xiii) Number of unprotected steel distribution services.

(xiv) Number of protected steel distribution services.

(xv) Number of plastic distribution services.

(xvi) Number of copper distribution services.

(xvii) Annual CO_2 and CH_4 emissions, in metric tons CO_2e for each gas, from all above grade T–D transfer stations combined.

(xviii) Annual CO_2 and CH_4 emissions, in metric tons CO_2e for each gas, from all below grade T–D transfer stations combined.

(xix) Annual CO_2 and CH_4 emissions, in metric tons CO_2e for each gas, from all above grade metering-regulating stations (including T–D transfer stations) combined.

(xx) Annual CO_2 and CH_4 emissions, in metric tons CO_2e for each gas, from all below grade metering-regulating stations (including T–D transfer stations) combined.

(xxi) Annual CO_2 and CH_4 emissions, in metric tons CO_2e for each gas, from all distribution mains combined.

(xxii) Annual CO_2 and CH_4 emissions, in metric tons CO_2e for each gas, from all distribution services combined.

(17) * * *

(v) For each EOR pump, report annual CO_2 and CH_4 emissions, expressed in metric tons CO_2e for each gas.

(18) For EOR hydrocarbon liquids dissolved CO_2 for each sub-basin category (refer to Equation W–38 of § 98.233), report the following:

* * * * *

(iii) Report annual CO_2 emissions at the sub-basin level, expressed in metric tons CO_2e.

(19) * * *

(iii) Report annual CO_2, CH_4, and N_2O emissions from external fuel combustion units with a rated heat capacity larger than 5 mmBtu/hr, expressed in metric tons CO_2e for each gas, by type of unit.

* * * * *

(v) Cumulative number of internal fuel combustion units, not compressor-drivers, with a rated heat capacity equal to or less than 1 mmBtu/hr or 130 horsepower, by type of unit.

(vi) Report annual CO_2, CH_4, and N_2O emissions from internal combustion units greater than 1mmBtu/hr, expressed in metric tons CO_2e for each gas, by type of unit.

(vii) Cumulative volume of fuel combusted in internal combustion units with a rated heat capacity larger than 1 mmBtu/hr or 130 horsepower, by fuel type.

* * * * *

(e) For onshore petroleum and natural gas production, report the best available estimate of API gravity, best available estimate of gas to oil ratio, and best available estimate of average low pressure separator pressure for each oil sub-basin category.

■ 9. Section 98.237 is amended by adding paragraph (e) to read as follows:

§ 98.237 Records that must be retained.

* * * * *

(e) The records required under § 98.3(g)(2)(i) shall include an explanation of how company records, engineering estimation, or best available information are used to calculate each applicable parameter under this subpart.

■ 10. Section 98.238 is amended by:

■ a. Revising the definitions of ''Facility with respect to natural gas distribution for purposes of this subpart and subpart A'', ''Facility with respect to onshore petroleum and natural gas production for purposes of this subpart and for subpart A'', ''Farm Taps'', and ''Transmission pipeline''.

■ b. Adding definitions of ''Associated with a single well-pad'', ''Distribution pipeline'', ''Flare'', ''Forced extraction'', ''Horizontal well'', ''Meter/regulator run'', ''Metering-regulating station'', ''Natural gas'', ''Pressure groups'', ''Sub-basin category'', ''Transmission-distribution transfer station'', ''Tubing diameter groups'', ''Tubing systems'', ''Vertical well'', and ''Well testing venting and flaring''.

■ c. Removing the definitions of ''Gas well'' and ''Oil well''.

The revisions read as follows:

§ 98.238 Definitions.

* * * * *

Associated with a single well-pad means associated with the hydrocarbon stream as produced from one or more wells located on that single well-pad. The association ends where the stream from a single well-pad is combined with streams from one or more additional single well-pads, where the point of combination is located off that single well-pad. Onshore production storage tanks on or associated with a single well-pad are considered a part of the onshore production facility.

* * * * *

Distribution pipeline means a pipeline that is designated as such by the Pipeline and Hazardous Material Safety Administration (PHMSA) 49 CFR 192.3.

* * * * *

Facility with respect to natural gas distribution for purposes of reporting under this subpart and for the corresponding subpart A requirements means the collection of all distribution pipelines and metering-regulating stations that are operated by a Local Distribution Company (LDC) within a single state that is regulated as a separate operating company by a public utility commission or that are operated as an independent municipally-owned distribution system.

Facility with respect to onshore petroleum and natural gas production for purposes of reporting under this subpart and for the corresponding subpart A requirements means all petroleum or natural gas equipment on a single well-pad or associated with a single well-pad and CO_2 EOR operations that are under common ownership or common control including leased, rented, or contracted activities by an onshore petroleum and natural gas production owner or operator and that are located in a single hydrocarbon basin as defined in § 98.238. Where a person or entity owns or operates more than one well in a basin, then all onshore petroleum and natural gas production equipment associated with all wells that the person or entity owns or operates in the basin would be considered one facility.

Farm Taps are pressure regulation stations that deliver gas directly from transmission pipelines to generally rural customers. In some cases a nearby LDC may handle the billing of the gas to the customer(s).

* * * * *

Flare, for the purposes of subpart W, means a combustion device, whether at ground level or elevated, that uses an

open or closed flame to combust waste gases without energy recovery.

* * * * *

Forced extraction of natural gas liquids means removal of ethane or higher carbon number hydrocarbons existing in the vapor phase in natural gas, by removing ethane or heavier hydrocarbons derived from natural gas into natural gas liquids by means of a forced extraction process. Forced extraction processes include but are not limited to refrigeration, absorption (lean oil), cryogenic expander, and combinations of these processes. Forced extraction does not include in and of itself; natural gas dehydration, or the collection or gravity separation of water or hydrocarbon liquids from natural gas at ambient temperature or heated above ambient temperatures, or the condensation of water or hydrocarbon liquids through passive reduction in pressure or temperature, or portable dewpoint suppression skids.

Horizontal well means a well bore that has a planned deviation from primarily vertical to a primarily horizontal inclination or declination tracking in parallel with and through the target formation.

* * * * *

Meter/regulator run means a series of components used in regulating pressure or metering natural gas flow or both.

Metering-regulating station means a station that meters the flowrate, regulates the pressure, or both, of natural gas in a natural gas distribution facility. This does not include customer meters, customer regulators, or farm taps.

Natural gas means a naturally occurring mixture or process derivative of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface, of which its constituents include, but are not limited to, methane, heavier hydrocarbons and carbon dioxide. Natural gas may be field quality, pipeline quality, or process gas.

* * * * *

Pressure groups as applicable to each sub-basin are defined as follows: Less than or equal to 25 psig; greater than 25 psig and less than or equal to 60 psig; greater than 60 psig and less than or equal to 110 psig; greater than 110 psig and less than or equal to 200 psig; and greater than 200 psig. The pressure in the context of pressure groups is either the well shut-in pressure; well casing pressure; or you may use the casing-to-tubing pressure of one well from the same sub-basin multiplied by the tubing pressure for each well in the sub-basin.

* * * * *

Sub-basin category, for onshore natural gas production, means a subdivision of a basin into the unique combination of wells with the surface coordinates within the boundaries of an individual county and subsurface completion in one or more of each of the following five formation types: Oil, high permeability gas, shale gas, coal seam, or other tight reservoir rock. The distinction between high permeability gas and tight gas reservoirs shall be designated as follows: High permeability gas reservoirs with >0.1 millidarcy permeability, and tight gas reservoirs with ≤0.1 millidarcy permeability. Permeability for a reservoir type shall be determined by engineering estimate. Wells that produce from high permeability gas, shale gas, coal seam, or other tight reservoir rock are considered gas wells; gas wells producing from more than one of these formation types shall be classified into only one type based on the formation with the most contribution to production as determined by engineering knowledge. All wells that produce hydrocarbon liquids and do not meet the definition of a gas well in this sub-basin category definition are considered to be in the oil formation. All emission sources that handle condensate from gas wells in high permeability gas, shale gas, or tight reservoir rock formations are considered to be in the formation that the gas well belongs to and not in the oil formation.

Transmission-distribution (T–D) transfer station means a metering-regulating station where a local distribution company takes part or all of the natural gas from a transmission pipeline and puts it into a distribution pipeline.

Transmission pipeline means a Federal Energy Regulatory Commission rate-regulated Interstate pipeline, a state rate-regulated Intrastate pipeline, or a pipeline that falls under the ''Hinshaw Exemption'' as referenced in section 1(c) of the Natural Gas Act, 15 U.S.C. 717–717 (w)(1994).

Tubing diameter groups are defined as follows: Outer diameter less than or equal to 1 inch; outer diameter greater than 1 inch and less than 2.375 inch; and outer diameter greater than or equal to 2.375 inch.

Tubing systems means piping equal to or less than one half inch diameter as per nominal pipe size.

* * * * *

Vertical well means a well bore that is primarily vertical but has some unintentional deviation or one or more intentional deviations to enter one or more subsurface targets that are off-set horizontally from the surface location, intercepting the targets either vertically or at an angle.

Well testing venting and flaring means venting and/or flaring of natural gas at the time the production rate of a well is determined for regulatory, commercial, or technical purposes. If well testing is conducted immediately after well completion or workover, then it is considered part of well completion or workover.

■ 11. Table W–1A to Subpart W of Part 98 is revised to read as follows:

TABLE A–1A OF SUBPART W—DEFAULT WHOLE GAS EMISSION FACTORS FOR ONSHORE PETROLEUM AND NATURAL GAS PRODUCTION

Onshore petroleum and natural gas production	Emission factor (scf/hour/component)
Eastern U.S.	
Population Emission Factors—All Components, Gas Service [1]	
Valve	0.640
Connector	0.083
Open-ended Line	1.46
Pressure Relief Valve	0.97
Low Continuous Bleed Pneumatic Device Vents [2]	1.39
High Continuous Bleed Pneumatic Device Vents [2]	37.3
Intermittent Bleed Pneumatic Device Vents [2]	13.5
Pneumatic Pumps [3]	10.3

TABLE A–1A OF SUBPART W—DEFAULT WHOLE GAS EMISSION FACTORS FOR ONSHORE PETROLEUM AND NATURAL GAS PRODUCTION—Continued

Onshore petroleum and natural gas production	Emission factor (scf/hour/component)
Population Emission Factors—All Components, Light Crude Service [4]	
Valve	0.04
Flange	0.002
Connector	0.005
Open-ended Line	0.04
Pump	0.01
Other [5]	0.23
Population Emission Factors—All Components, Heavy Crude Service [6]	
Valve	0.0004
Flange	0.0007
Connector (other)	0.0002
Open-ended Line	0.004
Other [5]	0.002
Western U.S.	
Population Emission Factors—All Components, Gas Service [1]	
Valve	2.903
Connector	0.396
Open-ended Line	0.748
Pressure Relief Valve	4.631
Low Continuous Bleed Pneumatic Device Vents [2]	1.77
High Continuous Bleed Pneumatic Device Vents [2]	47.4
Intermittent Bleed Pneumatic Device Vents [2]	17.1
Pneumatic Pumps [3]	10.3
Population Emission Factors—All Components, Light Crude Service [4]	
Valve	0.04
Flange	0.002
Connector	0.005
Open-ended Line	0.04
Pump	0.01
Other [5]	0.23
Population Emission Factors—All Components, Heavy Crude Service [6]	
Valve	0.0004
Flange	0.0007
Connector (other)	0.0002
Open-ended Line	0.004
Other [5]	0.002

[1] For multi-phase flow that includes gas, use the gas service emissions factors.
[2] Emission Factor is in units of "scf/hour/device."
[3] Emission Factor is in units of "scf/hour/pump."
[4] Hydrocarbon liquids greater than or equal to 20°API are considered "light crude."
[5] "Others" category includes instruments, loading arms, pressure relief valves, stuffing boxes, compressor seals, dump lever arms, and vents.
[6] Hydrocarbon liquids less than 20°API are considered "heavy crude."

■ 12. Table W–2 of Subpart W of Part 98 is revised to read as follows:

TABLE W–2 OF SUBPART W—DEFAULT TOTAL HYDROCARBON EMISSION FACTORS FOR ONSHORE NATURAL GAS PROCESSING

Onshore natural gas processing plants	Emission factor (scf/hour/component)
Leaker Emission Factors—Compressor Components, Gas Service	
Valve [1]	14.84
Connector	5.59
Open-Ended Line	17.27

TABLE W–2 OF SUBPART W—DEFAULT TOTAL HYDROCARBON EMISSION FACTORS FOR ONSHORE NATURAL GAS PROCESSING—Continued

Onshore natural gas processing plants	Emission factor (scf/hour/ component)
Pressure Relief Valve	39.66
Meter	19.33
Leaker Emission Factors—Non-Compressor Components, Gas Service	
Valve [1]	6.42
Connector	5.71
Open-Ended Line	11.27
Pressure Relief Valve	2.01
Meter	2.93

[1] Valves include control valves, block valves and regulator valves.

■ 13. Table W–3 to Subpart W of Part 98 is revised to read as follows:

TABLE W–3 OF SUBPART W—DEFAULT TOTAL HYDROCARBON EMISSION FACTORS FOR ONSHORE NATURAL GAS TRANSMISSION COMPRESSION

Onshore natural gas transmission compression	Emission factor (scf/hour/ component)
Leaker Emission Factors—Compressor Components, Gas Service	
Valve [1]	14.84
Connector	5.59
Open-Ended Line	17.27
Pressure Relief Valve	39.66
Meter	19.33
Leaker Emission Factors—Non-Compressor Components, Gas Service	
Valve [1]	6.42
Connector	5.71
Open-Ended Line	11.27
Pressure Relief Valve	2.01
Meter	2.93
Population Emission Factors—Gas Service	
Low Continuous Bleed Pneumatic Device Vents [2]	1.37
High Continuous Bleed Pneumatic Device Vents [2]	18.20
Intermittent Bleed Pneumatic Device Vents [2]	2.35

[1] Valves include control valves, block valves and regulator valves.
[2] Emission Factor is in units of "scf/hour/device."

■ 14. Table W–4 to Subpart W of Part 98 is revised to read as follows:

TABLE W–4 OF SUBPART W—DEFAULT TOTAL HYDROCARBON EMISSION FACTORS FOR UNDERGROUND NATURAL GAS STORAGE

Underground natural gas storage	Emission factor (scf/hour/ component)
Leaker Emission Factors—Storage Station, Gas Service	
Valve [1]	14.84
Connector	5.59
Open-Ended Line	17.27
Pressure Relief Valve	39.66
Meter	19.33

TABLE W–4 OF SUBPART W—DEFAULT TOTAL HYDROCARBON EMISSION FACTORS FOR UNDERGROUND NATURAL GAS STORAGE—Continued

Underground natural gas storage	Emission factor (scf/hour/ component)
Population Emission Factors—Storage Wellheads, Gas Service	
Connector	0.01
Valve	0.1
Pressure Relief Valve	0.17
Open Ended Line	0.03
Population Emission Factors—Other Components, Gas Service	
Low Continuous Bleed Pneumatic Device Vents [2]	1.37
High Continuous Bleed Pneumatic Device Vents [2]	18.20
Intermittent Bleed Pneumatic Device Vents [2]	2.35

[1] Valves include control valves, block valves and regulator valves.
[2] Emission Factor is in units of "scf/hour/device."

■ 15. Table W–5 to Subpart W of Part 98 is revised to read as follows:

TABLE W–5 OF SUBPART W—DEFAULT METHANE EMISSION FACTORS FOR LIQUEFIED NATURAL GAS (LNG) STORAGE

LNG storage	Emission factor (scf/hour/ component)
Leaker Emission Factors—LNG Storage Components, LNG Service	
Valve	1.19
Pump Seal	4.00
Connector	0.34
Other [1]	1.77
Population Emission Factors—LNG Storage Compressor, Gas Service	
Vapor Recovery Compressor	4.17

[1] "Other" equipment type should be applied for any equipment type other than connectors, pumps, or valves.
[2] Emission Factor is in units of "scf/hour/device."

■ 16. Table W–6 to Subpart W of Part 98 is revised to read as follows:

TABLE W–6 OF SUBPART W—DEFAULT METHANE EMISSION FACTORS FOR LNG IMPORT AND EXPORT EQUIPMENT

LNG import and export equipment	Emission factor (scf/hour/ component)
Leaker Emission Factors—LNG Terminals Components, LNG Service	
Valve	1.19
Pump Seal	4.00
Connector	0.34
Other [1]	1.77
Population Emission Factors—LNG Terminals Compressor, Gas Service	
Vapor Recovery Compressor [2]	4.17

[1] "Other" equipment type should be applied for any equipment type other than connectors, pumps, or valves.
[2] Emission Factors is in units of "scf/hour/compressor."

■ 17. Table W–7 to subpart W of Part 98 is revised to read as follows:

TABLE W–7 OF SUBPART W—DEFAULT METHANE EMISSION FACTORS FOR NATURAL GAS DISTRIBUTION

Natural gas distribution	Emission factor (scf/hour/component)
Leaker Emission Factors—Transmission-Distribution Transfer Station [1] Components, Gas Service	
Connector	1.69
Block Valve	0.557
Control Valve	9.34
Pressure Relief Valve	0.27
Orifice Meter	0.212
Regulator	0.772
Open-ended Line	26.131
Population Emission Factors—Below Grade Metering-Regulating station [1] Components, Gas Service [2]	
Below Grade M&R Station, Inlet Pressure > 300 psig	1.30
Below Grade M&R Station, Inlet Pressure 100 to 300 psig	0.20
Below Grade M&R Station, Inlet Pressure < 100 psig	0.10
Population Emission Factors—Distribution Mains, Gas Service [3]	
Unprotected Steel	12.58
Protected Steel	0.35
Plastic	1.13
Cast Iron	27.25
Population Emission Factors—Distribution Services, Gas Service [4]	
Unprotected Steel	0.19
Protected Steel	0.02
Plastic	0.001
Copper	0.03

[1] Excluding customer meters.
[2] Emission Factor is in units of "scf/hour/station."
[3] Emission Factor is in units of "scf/hour/mile."
[4] Emission Factor is in units of "scf/hour/number of services."

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Part V

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0058; FRL–9503–6]

RIN 2060–AR13

National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reconsideration of final rule.

SUMMARY: On March 21, 2011, the EPA promulgated national emission standards for the control of hazardous air pollutants from new and existing industrial, commercial, and institutional boilers and process heaters at major sources of hazardous air pollutants. On that same day, the EPA also published a notice announcing its intent to reconsider certain provisions of the final rule. The EPA subsequently issued a notice on May 18, 2011, to postpone the effective dates of the final rule until judicial review has been completed, or the agency finalizes its reconsideration of the standard, whichever is earlier. In the action to postpone the effective dates of the rule, the EPA also requested the public to submit data and information to assist the EPA in its reconsideration. Following these actions, the Administrator received several petitions for reconsideration. In response to the March 21, 2011, notice announcing its intent to initiate reconsideration and the petitions submitted, the EPA is reconsidering and requesting comment on several provisions of the final rule. Additionally, the EPA is proposing amendments and technical corrections to the final rule to clarify definitions, references, applicability, and compliance issues raised by stakeholders subject to the final rule.

DATES: *Comments.* Comments must be received on or before February 21, 2012.

Public Hearing. We will hold a public hearing concerning the proposed items for reconsideration. Persons interested in presenting oral testimony at the hearing should contact Ms. Teresa Clemons at (919) 541–7689 or at *clemons.teresa@epa.gov* by January 3, 2012. If no one requests to speak at the public hearing by January 3, 2012, then the public hearing will be cancelled. We will specify the date and time of the public hearings on *http://www.epa.gov/ttn/atw/boiler/boilerpg.html.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0058, by one of the following methods:

- *http://www.regulations.gov:* Follow the instructions for submitting comments.
- *Email:* Comments may be sent by email to *a-and-r-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2002–0058.
- *Fax:* Fax your comments to: (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2002–0058.
- *Mail:* Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Docket ID No. EPA–HQ–OAR–2002–0058. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (2822T), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2002–0058. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Shrager, Energy Strategies Group, Sector Policies and Programs Division, (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–7689; Fax number: (919) 541–5450; Email address: *shrager.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of this Document. The following outline is provided to aid in locating information in this preamble.

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G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this notice of reconsideration apply to me?

The regulated categories and entities potentially affected by this action include:

Category	NAICS code [1]	Examples of potentially regulated entities
Any industry using a boiler or process heater as defined in the proposed rule.	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this reconsideration action. To determine whether your facility may be affected by this reconsideration action, you should examine the applicability criteria in 40 CFR 63.7485 of subpart DDDDD (National Emission Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters). If you have any questions regarding the applicability of the proposed rule to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative, as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments to the EPA?

Submitting CBI. Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the following address: Mr. Robert Morales, c/o OAQPS Document Control Officer (Room C404–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attn: Docket ID No. EPA–HQ–OAR–2002–0058.

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a disk or CD–ROM that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

C. How do I obtain a copy of this document and other related information?

Docket. The docket number for this action and the proposed rule (40 CFR part 63, subpart DDDDD) is Docket ID No. EPA–HQ–OAR–2002–0058.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this action is available on the WWW through the Technology Transfer Network (TTN) Web site. Following signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Background Information

On March 21, 2011, the EPA issued final standards for new and existing industrial, commercial, and institutional boilers and process heaters, pursuant to its authority under section 112 of the Clean Air Act (CAA). On the same day as this final rule was issued, EPA also stated in a separate notice that it planned to initiate a reconsideration of several provisions of the final rule. This reconsideration notice identified several provisions of the final rule where additional public comment was appropriate, including:

- Revisions to the proposed subcategories.
- Establishing a fuel specification through which gas-fired boilers that use a fuel other than natural gas or refinery gas may be considered Gas 1 units.
- Establishing a work practice standard for limited use units.
- Providing an affirmative defense for malfunction events.

This notice also identified several issues of central relevance to the rulemaking where reconsideration was appropriate under CAA section 307(d), including:

- Revisions to the proposed monitoring requirements for carbon monoxide for major source boilers.
- Revisions to the proposed dioxin emission limit and testing requirement for major source boilers.
- Establishing a full-load stack test requirement for carbon monoxide coupled with continuous oxygen (oxygen trim) monitoring.

On May 18, 2011, the EPA issued a notice to postpone the effective dates of the March 21, 2011, final rule. This notice also requested that the public submit additional data and information to the EPA by July 15, 2011, for review and consideration in the reconsideration proceedings. Following promulgation of the final rule, the EPA received petitions for reconsideration from the following organizations (''Petitioners''): Alliance for Industrial Efficiency (AIE), U.S. Clean Heat Power Association (USCHPA), Alyeska Pipeline, American Chemistry Council (ACC), American Home Furnishings Alliance (AHFA), American Iron and Steel Institute (AISI), American Coke and Coal Chemicals Institute (ACCCI), American Municipal Power Inc. (AMP), American Petroleum Institute (API), National Petrochemical and Refiners Association (NPRA), Auto Industry Forum (AIF), Citizens Energy Group (CEG), Council of Industrial Boiler Owners (CIBO), CraftMaster Manufacturing Inc. (CMI), District Energy St. Paul, Florida Sugar Industry (FSI), Great Plains Synfuels (GPSP), Hovensa L.L.C., Tesoro Hawaii Corp., Industry Coalition (AF&PA et. al.), JELD–WEN Inc., Michigan State University (MSU), Penn State University (PSU), Purdue University, Renovar Energy Corp., Rochester Public Utilities (RPU), Sierra Club, Southeastern Lumber Manufacturers Association, State of Washington Department of Ecology, The Business Council for Sustainable Energy (BCSE), Utility Air Regulatory Group (UARG), United States Sugar Corporation (U.S. Sugar), Waste Management Inc. (WM), and Wisconsin Electric Power Company. Copies of these petitions are provided in the docket (see Docket ID No. EPA–HQ–OAR–2002–0058). Petitioners, pursuant to CAA section 307(d)(7)(B), requested that the EPA reconsider numerous provisions in the rules. In this action, the EPA is proposing multiple changes to the final rule in response to the reconsideration requests and the issues that the EPA previously identified as reconsideration issues. The EPA also is soliciting comment on several provisions of the final rule for which we are not proposing changes, because the public did not previously have an opportunity to comment on those provisions. The issues upon which the EPA is soliciting comment are discussed in section V of this preamble.

III. Summary of This Proposed Rule

This section summarizes the requirements of this action. Some of the requirements are currently found in the final boilers rule and are not being proposed to be revised. Section IV below provides a summary of the significant changes the EPA is proposing to make in its reconsideration of the final rule, and on which EPA is soliciting public comment.

A. What is the source category regulated by this proposed rule?

This proposed rule regulates industrial, commercial, and institutional boilers and process heaters located at major sources of hazardous air pollutants (HAP). Waste heat boilers and process heaters and boilers and process heaters that combust solid waste, except for specific exceptions to the definition of a solid waste incineration unit outlined in section 129(g)(1), are not subject to this proposed rule.

B. What is the affected source?

This proposed rule affects industrial, commercial, and institutional boilers and process heaters. A process heater is defined as a unit in which the combustion gases do not directly come into contact with process material or gases in the combustion chamber (*e.g.,* indirect fired). A boiler is defined as an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water.

C. What are the pollutants regulated by this proposed rule?

This proposed rule regulates hydrogen chloride (HCl) (as a surrogate for acid gas HAP), total selected metals (TSM) or particulate matter (PM) (as a surrogate for non-mercury HAP metals), carbon monoxide (CO) (as a surrogate for non-dioxin/furan organic HAP), mercury (Hg), and dioxin/furan emissions from boilers and process heaters.

D. What emission limits and work practice standards must I meet?

You must meet the emission limits presented in Table 1 of this preamble for each subcategory of units listed in the table. This proposed rule includes 17 subcategories, which are based on unit design. New and existing units in 3 of the subcategories would be subject to work practices standards in lieu of emission limits for all pollutants. Numeric emission limits are being proposed for new and existing sources in each of 14 subcategories, which are shown in Table 1 of this preamble.

HCl and Hg are ''fuel-based pollutants'' that directly result from contaminants in the fuels that are combusted. For those pollutants, if your new or existing unit combusts at least 10 percent solid fuel on an annual basis, your unit is subject to emission limits that are based on data from all of the solid fuel-fired combustor designs. If your new or existing unit combusts liquid fuel (except as noted in this proposed rule) and less than 10 percent solid fuel and your facility is located in the continental United States, your unit is subject to the liquid fuel emission limits for the fuel-based pollutants. If your facility is located outside the lower contiguous 48 states and Alaska (referred to as a non-continental unit for the remainder of this preamble and in this proposed rule), and your new or existing unit combusts liquid fuel (except as noted in this rule) and less than 10 percent solid fuel, your unit is subject to the non-continental liquid fuel emission limits for the fuel-based pollutants. Finally, for the fuel-based pollutants, if your unit combusts gaseous fuel that does not qualify as a ''Gas 1'' fuel, your unit is subject to the Gas 2 emission limits in Table 1 of this preamble. If your unit is a metal process furnace, limited-use unit, or Gas 1 unit (that is, it combusts only natural gas,

refinery gas, or other clean gas that meets the fuel specification, with limited exceptions for gas curtailments and emergencies), your unit is subject to a work practice standard that requires an annual tune-up in lieu of emission limits.

For the combustion-based pollutants, PM (a surrogate for metallic HAP) and CO (a surrogate for non-dioxin organic HAP), your unit is subject to the emission limits for the design-based subcategories shown in Table 1 of this preamble. We also are proposing, as alternatives to the PM limits, total selected metals emission limits for subcategories of units that combust solid fuels or Gas 2 fuels. If your new or existing boiler or process heater burns at least 10 percent biomass on an annual average heat input [1] basis, the unit is in one of the biomass subcategories. If your new or existing boiler or process heater burns at least 10 percent coal, on an annual average heat input basis, and less than 10 percent biomass, on an annual average heat input basis, the unit is in one of the coal subcategories. If your facility is located in the lower contiguous 48 states or Alaska and your new or existing boiler or process heater burns light liquid fuel (*i.e.,* distillate oil, biodiesel, or vegetable oil) and less than 10 percent coal and less than 10 percent biomass, on an annual average heat input basis, your unit is in the light liquid subcategory. If your facility is located in the lower contiguous 48 states or Alaska and your new or existing boiler or process heater burns heavy liquid fuel (other liquids that are not defined as light liquids) and less than 10 percent coal and less than 10 percent biomass, on an annual average heat input basis, your unit is in the heavy liquid subcategory. If your non-continental new or existing boiler or process heater burns liquid fuel and less than 10 percent coal and less than 10 percent biomass, on an annual average heat input basis, your unit is in the non-continental liquid subcategory. Finally, for combustion-based pollutants, if your unit combusts gaseous fuel that does not qualify as a ''Gas 1'' fuel, your unit is subject to the Gas 2 emission limits in Table 1. If your unit combusts only natural gas, refinery gas, or equivalent fuel (other gas that qualifies as Gas 1 fuel), with limited exceptions for gas curtailment and emergencies, your unit is subject to a work practice standard that requires an annual tune-up in lieu of emission limits.

TABLE 1—EMISSION LIMITS FOR BOILERS AND PROCESS HEATERS

[lb/MMBtu heat input basis unless noted; alternative output based limits are not shown in the summary table below]

Subcategory	Filterable Particulate Matter (Filterable PM) (or total selected metals) (lb per MMBtu of heat input) [a]	Hydrogen chloride (HCl) (lb per MMBtu of heat input) [a]	Mercury (Hg) (lb per MMBtu of heat input) [a]	Carbon monoxide(CO) (ppm @3% oxygen) [a]	Alternate CO CEMS limit, (ppm @3% oxygen) [b]
Existing—Solid fuel	NA	0.022	3.1E–06	NA	NA
Existing—Coal Stoker	0.028 (8.3E–05)	NA	NA	220	34
Existing—Coal Fluidized Bed	0.088 (1.7E–05)	NA	NA	56	59
Existing—Coal-Burning Pulverized Coal	0.044 (5.9E–05)	NA	NA	41	28
Existing—Biomass Wet Stoker/Sloped Grate/Other	0.029 (5.7E–05)	NA	NA	790	410
Existing—Biomass Kiln-Dried Stoker/Sloped Grate/Other	0.32 (0.004)	NA	NA	250	ND
Existing—Biomass Fluidized Bed	0.11 (0.0012)	NA	NA	370	180
Existing—Biomass Suspension Burner	0.051 (0.0011)	NA	NA	58	1,400
Existing—Biomass Dutch Ovens/Pile Burners	0.036 (2.4E–04)	NA	NA	810	440
Existing—Biomass Fuel Cells	0.033 (4.9E–05)	NA	NA	1,500	ND
Existing—Biomass Hybrid Suspension Grate	0.44 (4.9E–04)	NA	NA	3,900	730
Existing—Liquid	NA	0.0012	2.6E–05	NA	NA
Existing—Heavy Liquid	[c] 0.062	NA	NA	10	18
Existing—Light Liquid	[c] 0.0034	NA	NA	7	[d] 60
Existing—non-Continental Liquid	[c] 0.0080	NA	NA	18	[e] 91
Existing—Gas 2 (Other Process Gases)	0.0067 (2.4E–04)	0.0017	7.9E–06	4	ND
New—Solid Fuel	NA	0.022	8.6E–07	NA	NA
New—Coal Stoker	0.028 (2.2E–05)	NA	NA	19	34
New—Coal Fluidized Bed	0.0011 (1.7E–05)	NA	NA	17	59
New—Coal-Burning Pulverized Coal	0.0013 (2.8E–05)	NA	NA	9	28
New—Biomass Wet Stoker/Sloped Grate/Other	0.029 (2.6E–05)	NA	NA	590	410
New—Biomass Kiln-Dried Stoker/Sloped Grate/Other	0.32 (0.0040)	NA	NA	250	ND
New—Biomass Fluidized Bed	0.0098 (4.2E–05)	NA	NA	230	180
New—Biomass Suspension Burner	0.051 (0.0011)	NA	NA	58	1,400
New—Biomass Dutch Ovens/Pile Burners	0.036 (4.1E–05)	NA	NA	810	440
New—Biomass Fuel Cells	0.011 (4.9E–05)	NA	NA	210	ND
New—Biomass Hybrid Suspension Grate	0.026 (4.9E–04)	NA	NA	1,500	730
New—Liquid	NA	0.0012	4.9E–07	NA	NA
New—Heavy Liquid	[c] 0.013	NA	NA	10	18
New—Light Liquid	[c] 0.0011	NA	NA	3	[d] 60
New—Non-Continental Liquid	[c] 0.0080	NA	NA	18	[e] 91
New—Gas 2 (Other Process Gases)	0.0067 (2.4E–04)	0.0017	7.9E–06	4	ND

NA—Not applicable; ND—No data available.
[a] 3-run average, unless otherwise noted.
[b] 10-day rolling average, unless otherwise noted.
[c] Total selected metals alternative limits are not available to units in any of the liquid subcategories.
[d] 1-day block average.

[1] Heat input means heat derived from combustion of fuel in a boiler or process heater and does not include the heat derived from preheated combustion air, recirculated flue gases or exhaust gases from other sources (such as stationary gas turbines, internal combustion engines, and kilns).

[e] 3-hour rolling average.

The emission limits in Table 1 apply only to new and existing boilers and process heaters that have a designed heat input capacity of 10 million British thermal units per hour (MMBtu/hr) or greater. We also are providing optional output-based standards in this proposed rule. Pursuant to CAA section 112(h), the final rule requires a work practice standard for the following particular classes of boilers and process heaters: new and existing units that have a designed heat input capacity of less than 10 MMBtu/hr, new and existing units in the Gas 1 (natural gas/refinery gas) subcategory and in the metal process furnaces subcategory, and new and existing limited-use units. The work practice standard for these boilers and process heaters requires the implementation of a tune-up program. We also are proposing a work practice standard for dioxin/furan emissions from all subcategories. Finally, the final rule includes a beyond-the-floor standard for all existing major source facilities having affected boilers or process heaters that would require the performance of a one-time energy assessment, as described in section IV of this preamble, of the affected boilers and facility to identify any cost-effective energy conservation measures.

E. What are the requirements during periods of startup, shutdown, and malfunction?

We are not proposing to change the malfunction provisions in this rule. *See* 76 FR 15613. We are proposing revised work practice standards for periods of startup and shutdown. The final rule required that an owner/operator must ''Minimize the unit's startup and shutdown periods following the manufacturer's recommended procedures. If manufacturer's recommended procedures are not available, you must follow recommended procedures for a unit of similar design for which manufacturer's recommended procedures are available.''

While we are maintaining a work practice approach for startup and shutdown, we are proposing to change the work practice standards to better reflect the maximum achievable control technology. First, we are proposing definitions of startup and shutdown. We are proposing to define startup as the period between the state of no combustion in the unit to the period where the unit first achieves 25 percent load (*i.e.,* a cold start). We are proposing to define shutdown as the period that begins when a unit last operates at 25 percent load and ending with a state of no fuel combustion in the unit. For periods of startup and shutdown, we are proposing the following work practice standard: you must employ good combustion practices and demonstrate that good combustion practices are maintained by monitoring O_2 concentrations and optimizing those concentrations as specified by the boiler manufacturer; you must ensure that boiler operators are trained in startup and shutdown procedures, including maintenance and cleaning, safety, control device startup, and procedures to minimize emissions; and you must maintain records during periods of startup and shutdown and include in your compliance reports the O_2 conditions/data for each startup event, length of startup/shutdown and reason for the startup/shutdown (*i.e.,* normal/routine, problem/malfunction, outage). You must comply with all applicable emissions limits at all times except for startup and shutdown periods, during which times you must comply with these work practices.

F. What are the testing and initial compliance requirements?

We are requiring that the owner or operator of a new or existing boiler or process heater conduct performance tests to demonstrate compliance with all applicable emission limits. An owner or operator of any affected unit would be required to conduct the following compliance tests as applicable:

(1) Conduct initial and annual stack tests to determine compliance with the PM emission limits using EPA Method 5 or 17 or conduct initial and annual stack tests to determine compliance with the TSM emission limits using EPA Method 29 for those subcategories with alternate TSM limits.

(2) Conduct initial and annual stack tests to determine compliance with the Hg emission limits using EPA Method 29, 30B, or ASTM–D6784–02 (Ontario Hydro Method).

(3) Conduct initial and annual stack tests to determine compliance with the HCl emission limits using EPA Method 26A or EPA Method 26 (if no entrained water droplets are in the sample).

(4) Use EPA Method 19 to convert measured concentration values to pound per million Btu values.

(5) Conduct initial and annual tests to determine compliance with the CO emission limits using EPA Method 10 or install, operate, and maintain CO continuous emission monitoring systems (CEMS) to determine compliance with the alternate CO CEMS-based emission limits.

As part of the initial compliance demonstration, we are requiring that you monitor specified operating parameters during the initial performance tests that you would conduct to demonstrate compliance with the PM or TSM (as appropriate), Hg, HCl, and CO emission limits. You must calculate the average hourly parameter values measured during each test run over the three-run performance test. The lowest or highest hourly parameter average measured during the three test runs (depending on the parameter measured) for each applicable parameter would establish the site-specific operating limit. The applicable operating parameters for which operating limits would be required to be established are based on the emissions limits applicable to your unit as well as the types of add-on controls on the unit. The following is a summary of the operating limits that we are requiring to be established for the various types of the following units:

(1) For boilers and process heaters with wet PM scrubbers, you must measure pressure drop across the scrubber and liquid flow rate of the scrubber during the performance test, and calculate the average hourly values during each test run. The lowest hourly average determined during the three test runs establishes your minimum site-specific pressure drop and liquid flow rate operating levels.

(2) If you are complying with an HCl emission limit using a wet acid gas scrubber, you must measure pH and liquid flow rate of the scrubber sorbent during the performance test, calculate the average hourly values during each test run of the performance test for HCl and determine the lowest hourly average of the pH and liquid flow rate for each test run for the performance test. This establishes your minimum pH and liquid flow rate operating limits.

(3) For boilers and process heaters with sorbent injection, you must measure the sorbent injection rate for each acid gas sorbent used during the performance tests for HCl and for activated carbon for Hg and calculate the hourly average for each sorbent injection rate during each test run. The lowest hourly average measured during the performance tests becomes your site-specific minimum sorbent injection rate operating limit. If different acid gas sorbents and/or injection rates are used during the HCl test, the lowest hourly

average value for each sorbent becomes your site-specific operating limit. When your unit operates at lower loads, multiply your sorbent injection rate by the load fraction (operating heat input divided by the average heat input during your last compliance test for the appropriate pollutant) to determine the required injection rate operating limit value.

(4) For boilers and process heaters with fabric filters not subject to PM Continuous Parametric Monitoring System (PM CPMS) or continuous compliance with an opacity limit (*i.e.,* continuous opacity monitoring systems (COMS)), you must operate the fabric filter such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period unless a PM CPMS is installed to monitor PM control. For the purposes of the rule, we define a PM CPMS as a continuous parametric monitoring device based on a detection principle of light scatter, light scintillation, beta attenuation, or mass accumulation detection of PM in the exhaust gas or representative exhaust gas sample, installed and operated on the effluent stack or duct downstream of any particulate control device(s), and programmed to provide a continuous electronic signal representative of ongoing particulate matter control device performance.

(5) For boilers and process heaters with electrostatic precipitators (ESP) not subject to PM CPMS or continuous compliance with an opacity limit (*i.e.,* COMS), you must measure the secondary voltage and secondary current of the ESP collection fields during the Hg and PM performance test. You then calculate the average total secondary electric power value from these parameters for each test run. The lowest hourly average total secondary electric power measured during the three test runs establishes your site-specific minimum operating limit for the ESP on a 12-hour block average basis.

(6) For boilers and process heaters that choose to demonstrate compliance with the Hg emission limit by fuel analysis, you must measure the Hg content of the inlet fuel that was burned during the Hg performance test. This value is your maximum fuel Hg content operating limit.

(7) For boilers and process heaters that choose to demonstrate compliance with the HCl emission limit by fuel analysis, you must measure the chlorine content of the inlet fuel that was burned during the HCl performance test. This value is your maximum fuel chlorine content operating limit.

(8) For boilers and process heaters that choose to demonstrate compliance with the total selected metals emission limit on the basis of fuel analysis, you are required to measure the total selected metals content of the inlet fuel that was burned during the total selected metals performance test. This value is your maximum fuel total selected metals content operating limit.

(9) For boilers and process heaters that are subject to a CO emission limit, you must record the oxygen concentration representative of your boiler operation (*e.g.,* oxygen trim) during the initial performance test.

These operating limits do not apply to owners or operators of boilers or process heaters having a heat input capacity of less than 10 MMBtu/hr or boilers or process heaters of any size which combust natural gas or other clean gas, metal process furnaces, or limited-use units. Instead, if requested, owners or operators of such boilers and process heaters shall submit to the delegated authority or the EPA, as appropriate, documentation that a tune-up meeting the requirements of this final rule was conducted. In order to comply with the work practice standard, a tune-up procedure must include the following actions:

(1) Inspect the burner and clean or replace any components of the burner as necessary,

(2) Inspect the flame pattern and make any adjustments to the burner necessary to optimize the flame pattern consistent with the manufacturer's specifications,

(3) Inspect the system controlling the air-to-fuel ratio and ensure that the system is correctly calibrated and functioning properly,

(4) Optimize total emissions of CO consistent with the manufacturer's specifications,

(5) Measure the concentration in the effluent stream of CO in parts per million by volume dry (ppmvd), before and after any adjustments related to the tune-up are made,

(6) Submit to the delegated authority or the EPA an annual report containing the concentrations of CO in the effluent stream in ppmvd and oxygen in percent dry basis, both measured before and after the adjustments of the unit; a description of any corrective actions taken as a part of the combustion adjustment; and the type and amount of fuel used over the 12 months prior to the adjustment.

Further, all owners or operators of major source facilities having boilers and process heaters subject to this final rule are required to submit to the delegated authority or the EPA, as appropriate, documentation that an energy assessment was performed by a qualified energy assessor and documentation of the cost-effective energy conservation measures indentified by the energy assessment.

G. What are the continuous compliance requirements?

To demonstrate continuous compliance with the emission limitations, we are requiring the following:

(1) For units combusting coal or residual fuel oil (*i.e.,* No. 4, 5 or 6 fuel oil) with average annual heat input rate of less than 250 MMBtu/hr (from the combustion of those fuels) or any units in the biomass subcategories and all biomass units that do not use a wet scrubber, opacity levels must be maintained to less than 10 percent (daily average) for existing and new units with applicable emission limits. If the unit is controlled with a fabric filter, instead of being subject to continuous opacity monitoring, the fabric filter must be continuously operated such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period (unless a PM CPMS is used).

(2) For units combusting coal or residual oil with heat input capacities of 250 MMBtu/hr or greater from the combustion of those fuels, the EPA is proposing the collection of data using a PM CPMS at all times that the unit is subject to numeric emission limits, with the exception of periods of PM CPMS repair, malfunction, scheduled maintenance, or QA/QC related activities. The operating unit will prepare, and submit for approval, a site-specific monitoring plan that addresses the PM CPMS design, data collection, and the QA/QC elements outlined in 63.8(d), including the performance criteria and design specifications for the monitoring system equipment, the sample interface location, frequency of quality control checks, frequency of system performance evaluations, ongoing operation and maintenance procedures as well as ongoing reporting and recordkeeping procedures. An annual deviation report must be submitted detailing data collected during periods of boiler startup, shutdown or malfunction and PM CPMS malfunction, repair, or other QA/QC related activity. Records of these data must be available on site for inspection, including corrective actions necessary to return the PM CPMS to operation consistent with the site specific monitoring plan. The operating unit will use output data collected from the CPMS (milliamps, milligrams per actual cubic meter, or other instrument output)

during all other operating hours where numeric emission limits apply to assess compliance with the operating limit. An arithmetic average of the measurement output values collected during each hour will be calculated, and for each operating day the arithmetic average of all hourly measurement output values will be calculated for the previous 30 operating days. You must transmit four reports per year for each PM CPMS to the EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface, or CEDRI, that is accessed through the EPA's Central Data Exchange (CDX) (*www.epa.gov/cdx*). Complete reports must be submitted within 60 days after March 31st, June 30th, September 30th, and December 31st. Complete reports contain daily PM CPMS rolling 30-day average values for the periods that end with each of the 4 previously mentioned dates.

(3) For boilers and process heaters with wet PM scrubbers, you must monitor pressure drop and liquid flow rate of the scrubber and maintain the 30-day rolling averages at or above the operating limits established during the performance test to demonstrate continuous compliance with the PM emission limits.

(4) For boilers and process heaters with wet acid gas scrubbers, you must monitor the pH and liquid flow rate of the scrubber and maintain the 30-day rolling average at or above the operating limits established during the most recent performance test to demonstrate continuous compliance with the HCl emission limits.

(5) For boilers and process heaters with dry scrubbers, you must continuously monitor the sorbent injection rate and maintain the hourly average at or above the operating limits, which include an adjustment for load, established during the performance tests. When your unit operates at lower loads, multiply your sorbent injection rate by the load fraction (operating load divided by the load during your last compliance test for the appropriate pollutant) to determine the required parameter value.

(6) For boilers and process heaters not required to install a CPMS and having an ESP installed, you must monitor the voltage and current of the ESP collection plates and maintain the 30-day rolling average total secondary electric power at or above the operating limits established during the Hg, PM, or TSM performance test.

(7) For units that choose to comply with either the Hg emission limit, the HCl emission limit, or TSM emission limit (solid fuel units only) based on fuel analysis rather than on performance testing, you must maintain monthly fuel records that demonstrate that you burned no new fuels or fuels from a new supplier such that the Hg content, chlorine content, or TSM content of the inlet fuel was maintained at or below your maximum fuel Hg content operating limit, your chlorine content operating limit, or your TSM content operating limit set during the performance tests. If you plan to burn a new fuel, a fuel from a new mixture, or a new supplier's fuel that differs from what was burned during the initial performance tests, then you must recalculate the maximum Hg input, maximum chlorine input, and/or maximum TSM input anticipated from the new fuels based on supplier data or own fuel analysis, using the methodology specified in Table 6 of this final rule. If the results of recalculating the inputs exceed the average content levels established during the initial test, then you must conduct a new performance test(s) to demonstrate continuous compliance with the applicable emission limit.

(8) For all boilers and process heaters, except those that are exempt from the incinerator standards under section 129 because they are qualifying facilities burning a homogeneous waste stream, you must maintain records of fuel use that demonstrate that your fuel was not solid waste.

(9) For boilers and process heaters, you must install, calibrate and operate an oxygen trim system in order to ensure efficient combustion and compliance with the CO standards.

(10) For boilers and process heaters that demonstrate compliance using a performance test you must maintain an operating load no greater than 110 percent of the operating load established during the performance test.

If an owner or operator would like to use a control device other than the ones specified in this section to comply with this final rule, the owner or operator should follow the requirements in 40 CFR 63.8(f), which presents the procedure for submitting a request to the Administrator to use alternative monitoring.

H. What are the notification, recordkeeping and reporting requirements?

All new and existing sources are required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 10 of this final rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting.

Each owner or operator is required to submit a notification of compliance status report, as required by § 63.9(h) of the General Provisions. This final rule requires the owner or operator to include certifications of compliance with rule requirements in the notification of compliance status report.

This proposed rule would require records to demonstrate compliance with each emission limit, operating limit and work practice standard, as specified in the General Provisions. Owners or operators of sources with units with heat input capacity of less than 10 MMBtu/hr, units combusting natural gas or other clean gas, metal process furnaces and limited use units must keep records of the dates and the results of each required boiler tune-up.

Records of either continuously monitored parameter data for a control device if a device is used to control the emissions or continuous monitoring systems (CMS) data are required.

You are required to keep the following records:

(1) All reports and notifications submitted to comply with the rule.

(2) Continuous monitoring data as required in the rule.

(3) Each instance in which you did not meet each emission limit and each operating limit (*i.e.,* deviations from the rule).

(4) Daily hours of operation by each source.

(5) Total fuel use by each affected source electing to comply with an emission limit based on fuel analysis for each 30-day period along with a description of the fuel, the total fuel usage amounts and units of measure, and information on the supplier and original source of the fuel.

(6) Calculations and supporting information of chlorine fuel input, as required in the rule, for each affected source with an applicable HCl emission limit.

(7) Calculations and supporting information of Hg fuel input, as required in the rule, for each affected source with an applicable Hg emission limit.

(8) A paragraph that discusses calculations and supporting information of TSM fuel input, as required in the rule, for each affected source with an applicable total selected metals emission limit.

(9) A signed statement, as required in the rule, indicating that you burned no new fuel type and no new fuel mixture or that the recalculation of chlorine input demonstrated that the new fuel or new mixture still meets chlorine fuel input levels, for each affected source with an applicable HCl emission limit.

(10) A signed statement, as required in the rule, indicating that you burned no new fuels and no new fuel mixture or that the recalculation of Hg fuel input demonstrated that the new fuel or new fuel mixture still meets the Hg fuel input levels, for each affected source with an applicable Hg emission limit.

(11) A signed statement, as required in the rule, indicating that you burned no new fuels and no new fuel mixture or that the recalculation of total selected metals fuel input demonstrated that the new fuel or new fuel mixture still meets the total selected metals fuel input levels, for each affected source with an applicable total selected metals emission limit.

(12) A copy of the results of all performance tests, fuel analyses, opacity observations, performance evaluations, or other compliance demonstrations conducted to demonstrate initial or continuous compliance with the rule.

(13) A copy of your site-specific monitoring plan developed for the rule as specified in 63 CFR 63.8(e), if applicable.

(14) A copy of your fuel analysis plan at least 60 days prior to demonstrating initial compliance.

You also are required to submit the following reports and notifications:

(1) Notifications required by the General Provisions.

(2) Initial Notification no later than 120 calendar days after you become subject to this subpart, even if you submitted an initial notification for the vacated standards that were promulgated in 2004.

(3) Notification of Intent to conduct performance tests and/or compliance demonstration at least 60 calendar days before the performance test and/or compliance demonstration is scheduled to occur.

(4) Notification of Compliance Status 60 calendar days following completion of the performance test and/or compliance demonstration.

(5) Compliance reports semi-annually.

I. How should emissions test results be submitted to the EPA?

The EPA must have performance test data to conduct effective reviews of CAA sections 112 standards, as well as for many other purposes including compliance determinations, emission factor development, and annual emission rate determinations. In conducting these required reviews, the EPA has found it ineffective and time consuming, for us, for regulatory agencies and for source owners and operators, to locate, collect, and submit performance test data because of varied locations for data storage and varied data storage methods. In recent years, however, stack testing firms have typically collected performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

In this proposal, the EPA is presenting a step to improve the ease and efficiency of data submittal and increase data accessibility. Specifically, the EPA is proposing that owners and operators of industrial, commercial, and institutional boilers and process heaters submit electronic copies of required performance test reports to EPA's WebFIRE database. The WebFIRE database was constructed to store performance test data for use in developing emission factors. A description of the WebFIRE database is available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main*.

Data entry would be through an electronic emissions test report structure called the Electronic Reporting Tool (ERT). The ERT would be able to transmit the electronic report through the EPA's CDX network for storage in the WebFIRE database making submittal of data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/index.html*.

The proposal to submit performance test data electronically to the EPA would apply only to those performance tests conducted using test methods that will be supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at *http://www.epa.gov/ttn/chief/ert/index.html.* We believe that industry would benefit from this proposed approach to electronic data submittal. With these data, the EPA would be able to develop improved emission factors, make fewer information requests, and promulgate better regulations.

One major advantage of the proposed submittal of performance test data through the ERT is that it provides a standardized method to compile and store much of the documentation required to be reported by this rule. Another advantage is that the ERT clearly states what testing information would be required. Another important proposed benefit of submitting these data to the EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. If the EPA has performance test data from these submittals, the EPA will likely need fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews. This would reduce the burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and the EPA (in terms of preparing and distributing data collection requests and assessing the results).

State, local, and tribal agencies could also benefit from more streamlined and accurate review of electronic data submitted to them. The ERT would allow for an electronic review process rather than a manual data assessment, making review and evaluation of the source provided data and calculations easier and more efficient. Finally, another benefit of the proposed data submittal to WebFIRE electronically is that these data would greatly improve the overall quality of existing and new emissions factors, by supplementing the pool of emissions test data for establishing emissions factors and by ensuring that the factors are more representative of current industry operational procedures. A common complaint from industry and regulators is that emission factors are outdated or do not represent a particular source category. With timely receipt and incorporation of data from most performance tests, the EPA would be able to ensure that emission factors, when updated, represent the most current range of operational practices. In summary, in addition to supporting regulation development, control strategy development and other air pollution control activities, having an electronic database populated with performance test data would save industry, state, local, tribal agencies and the EPA significant time, money, and effort while also improving the quality of emission inventories and, as a result, air quality regulations.

J. What are the proposed compliance dates?

The EPA is proposing to reset the compliance date for existing sources to the date 3 years after the date of publication of the final reconsideration rule. For new sources, the EPA is proposing to change the compliance date to 60 days after the date of publication of the final reconsideration rule or upon startup, whichever is later. We are not proposing to change the date that identifies whether a source is new or existing. This date, June 4, 2010, is the publication date of the original proposed rule.

IV. Actions We Are Taking

In this notice, we are granting reconsideration of, and requesting comment on, issues presented in the March 21, 2011, reconsideration notice as well as a subset of other issues raised by petitioners in their petitions for reconsideration. Section V of this preamble summarizes these issues and discusses our proposed responses to each issue.

We have revised the rule language to address provisions related to the reconsideration and are requesting comment on the revised rule text to clarify definitions, applicability, compliance and references to various sections of the rule. Finally, we are proposing technical corrections to certain applicability and compliance provisions in the final rule.

We are seeking public comment only on the issues specifically identified in Section V of this action. We will not respond to any comments addressing other aspects of the final rule or any other related rulemakings.

V. Discussion of Issues for Reconsideration

This section of the preamble contains EPA's basis for our responses to certain issues identified in the petitions for reconsideration and the changes to the rule that we are proposing. We solicit comment on all responses and revisions discussed in the following sections:

A. Surrogates and Selected Regulated Pollutants

1. Alternative Total Selected Metals Limit. Multiple petitioners requested that EPA include an emission limit for TSM as an alternative to the PM limits in the final rule, particularly for biomass units, as part of the reconsideration. After assessing the available data, the EPA determined that inclusion of these limits is appropriate for some subcategories, and the EPA is proposing TSM limits for each subcategory of units that combust solid fuels or Gas 2 fuels. Sources will have the option of meeting either the TSM limit or the alternative PM limit. The TSM measurement, which directly quantifies the HAP metals rather than relying on a surrogate, is a more direct measurement of HAP than PM and is, therefore, appropriate as a pollutant group for regulation with numeric emission limits. For this rule, TSM includes the following eight metals: Arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium. The EPA selected these eight metals, rather than all of the HAP metals other than Hg, because more test data are available for these metals than for the other two HAP metals, cobalt and antimony. The use of 8 of 10 metals should have little or no impact on a facility's selection of controls to meet the standards, and the controls that would be used to reduce emissions of the eight metals would be equally effective in reducing emissions of the other two metals. Therefore, TSM can serve as a surrogate for all metallic HAP except for Hg, which the final rule regulates separately.

For the light liquid, heavy liquid and non-continental liquid units subcategories, we are not proposing alternative TSM emission limits. Instead, we are proposing that these units meet the filterable PM emission limits in all instances. We are not proposing the TSM alternative because of the limited emission test data for TSM and the large variability in the TSM data for these subcategories. Using the EPA's maximum achievable control technology (MACT) floor methodology, the alternative TSM limits resulted in MACT floor values which do not appear to represent the actual performance of the best performing units. The EPA has sent follow-up inquiries to facilities to confirm these data, and is soliciting comment on whether alternative TSM limits are appropriate for the subcategories of units designed to combust liquid fuels. The EPA also is soliciting comment on whether an alternative approach to calculating the TSM MACT floors for these units is appropriate. If the EPA receives sufficient information that supports the alternative TSM standards for units designed to combust liquid fuels, we will consider adopting these limits in the final rule.

2. Work Practice for Dioxin/Furan Emissions. Multiple petitioners requested that EPA reassess the potential for applying work practice standards for dioxins/furans in lieu of numeric emission limits. The EPA has re-assessed the dioxin/furan data sets and has determined that, similar to data for electric utilities for which work practice standards were proposed for dioxins/furans, the large majority of the emission measurements for all of the subcategories are below the level that can be accurately measured using EPA Method 23. While the EPA recognized this as an issue prior to issuing the final rule, sufficient time was not available to fully analyze the issue. For this proposal, the EPA conducted extensive analyses to determine the lowest level of emissions that can be accurately measured using EPA Method 23. The percentages of measurements (test runs) below the method detection level (a level at which the pollutant is known to be present but is not accurately quantified) is about 55 percent, which is 10 percent lower than the percentage for electric utilities. However, in addition to the high percentage of measurements below the method detection level, a very high percentage of measurements are below the level that can be accurately measured (see section V.E.3 of this preamble) for each subcategory. Those percentage are as follows: Coal stoker—100 percent; coal fluidized bed—89 percent; pulverized coal—85 percent; biomass stoker/other—100 percent; biomass fluidized bed—100 percent; biomass dutch oven/pile burner—80 percent; biomass fuel cell—100 percent; heavy liquid—96 percent; light liquid—100 percent; gas 2 (other process gases)—100 percent; non-continental liquid—100 percent (based on No. 6 oil data). While data are not available for two of the biomass subcategories, there is no reason to believe that dioxin emissions for those subcategories would be different than for the other biomass-based subcategories. Based on the percentages of data below the method detection limit coupled with the percentage of data below the level that can be accurately quantified, the EPA concludes that emissions from industrial boilers and process heaters cannot practicably be measured, and the EPA is now proposing work practice standards in place of numeric emission limits for dioxin/furan. The work practice standards require an annual tune-up to ensure good combustion. Details on the assessment of the minimum level that can be accurately measured can be found in the docket memorandum entitled ''Updated data and procedure for handling below detection level data in analyzing various pollutant emissions databases for MACT and RTR emissions limits.'' We do not expect that the change from numeric emission limits to work practice standards will result in less public health protection because the levels of dioxin emitted from units in the source category are at or near current detection level capabilities, and we are not aware of any emissions controls that are demonstrated to reduce dioxin emissions from the low levels indicated by the available data for boilers and process heaters.

B. Output-Based Standards

1. Revisions to Boiler Efficiency Analysis

Petitioners requested that the EPA reassess the calculation of boiler efficiency, which is the key calculation in the development of output-based standards, because the EPA's

calculations often resulted in efficiencies that were unrealistically high, often above 100 percent, which is a physical impossibility. The petitioners attributed this to the fact that the EPA had disregarded feedwater temperature (industry average being 280 degrees F). The inclusion of feedwater temperature provides the correct assessment of boiler efficiency because it accounts for the heat energy that is supplied by steam from the boiler to heat the feedwater. The steam used to heat the feedwater is supplied by the boiler and was reported by facilities as part of the boiler ''steam output,'' but was not accounted for in the final rule efficiency calculations. Thus, the EPA has modified the development of the revised output-based emission limits to include the heat (energy) associated with the feedwater. The revised boiler efficiencies of the best performing units for each subcategory were determined by the equation:

Boiler Efficiency = (Steam output (Btu) − Feedwater Input (Btu))/(Fuel Input (Btu))

To calculate ''feedwater input (Btu)'', we used the industry average temperature of 280 degrees F and determined a heat content value of 249.3 Btu/lb. Unit operators provided the ''steam output (Btu)'' for each best performing unit in response to the EPA's information gathering efforts. For all best performing units reporting this steam energy output data, we calculated boiler efficiencies, as well as corresponding input-to-output conversion factors (CF). We averaged CF from the best performing units that have realistic boiler efficiencies averaged and assigned a subcategory-specific conversion factor. Finally, we applied the revised average CF to the proposed input-based emission limits to develop the revised alternate output-based limits. The resultant proposed output-based limits provide a compliance option that achieves emission reductions equivalent to those achieved by the input-based limits and encourage energy efficiency.

2. Other Changes to Output-Based Provisions

a. Accommodating Emissions Averaging Provisions. In order to allow for emissions averaging for units that elect to comply with the output-based emission limits, the EPA is proposing to add additional equations to the rule to allow for emissions averaging as requested by petitioners. Averaging of output based limits was not included in the final rule due to time constraints, but there is no technical reason why averaging of output-based limits is inappropriate. The output-based limits are equivalent to the input-based limits and promote energy efficiency, and, therefore, EPA is proposing to allow averaging for units that elect to comply with the output-based standards.

b. Output-Based Standards for Units that Generate Electricity. Petitioners pointed out that the final output-based standards were not designed to consider efficiency improvements from units that generate electricity only. In response to this concern, the EPA is proposing to add language to the definition of ''Steam output'' that addresses boilers that only produce electricity. The language provides fuel-specific conversion factors for electricity generating units that result in output-based standards in units of pounds per megawatt-hour.

c. Clarification that output-based standards are alternative standards. Petitioners requested that the EPA clarify in the tables that the output-based standards are alternative standards to the input-based standards. The EPA is proposing regulatory text to make this clarification.

d. Legal Authority for Emission Credits. One petitioner questioned the legal authority of the emission credit system and stated that it should be removed from the final rule. However, the petitioner provided no support for its position, and the EPA continues to believe that the emission credit system is consistent with the CAA as promulgated. Therefore, no changes are being proposed. However, we are specifically requesting comment on: (1) The overall concept of the emission credit provision, (2) how to administer it consistently across the country, and (3) available guidelines to inform the delegated authority's decision to approve the implementation plan.

C. Subcategories

In the final rule, the EPA added subcategories for hybrid suspension/grate biomass units, limited-use units, solid fuel units, and non-continental liquid units. The EPA also added a fuel specification to the final rule that would allow units combusting gases not defined as ''Gas 1'' gases to qualify as Gas 1 units by demonstrating that the fuels combusted meet a fuel specification. Petitioners requested that EPA allow comment on these subcategory changes and the fuel specification, and EPA is now soliciting comments on these portions of the final rule, including the changes and particular issues described in sections [1 through 7] below. Petitioners also requested additional subcategories, clarification of several subcategory definitions, and changes to some of the subcategory definitions.

1. *Solid Fuel.* The EPA added a solid fuel subcategory to the final rule that replaced previously proposed separate subcategories for units designed to burn solid fossil-based fuels and units designed to burn solid bio-based fuels. The solid fuel subcategory applied to pollutants identified in the final rule as fuel-based pollutants (PM, HCl, and Hg). Standards for combustion-based pollutants (CO and dioxin/furan), however, were based on specific subcategories for the various types of combustion units, including the specific fuel types the units were designed to combust. The rationale for the change is presented in the preamble to the final rule and the EPA is, in this action, soliciting comments on the solid fuel subcategory.

One significant change is also being proposed related to the solid fuel subcategory. Several petitioners provided information to support the position that PM should be considered a combustion-based pollutant rather than a fuel-based pollutant. After assessing the points raised by the petitioners, the EPA determined that PM emissions are influenced both by fuel type and unit design. Therefore, it is appropriate to treat PM as a combustion-based pollutant. Differences in PM particle size, applicability of air-pollution controls to units combusting various fuels, and the lack of demonstration of certain control technologies on certain designs of boilers (*e.g.,* fabric filters are not used on any hybrid suspension grate boilers) suggest that PM is more appropriately classified as a combustion-based pollutant. Therefore, the EPA is now proposing separate PM limits for each ''combustion-based'' subcategory.

Emission limits for HCl and Hg were developed for the same subcategories as presented in the March 21, 2011, final rule; the only changes associated with the HCl and Hg emission limits are due to new data, corrections to old data, and inventory changes.

2. *Units Designed to Combust Liquid Fuels.* The EPA finalized a single subcategory covering liquid fuel-fired units (with limited exceptions such as non-continental liquid units and limited-used units). Petitioners requested that the EPA reconsider the liquid unit subcategories and include separate subcategories for units designed to combust light liquids and units designed to combust heavy liquids. Petitioners cited issues related to achievability of standards and the types of controls that are used on liquid units but did not cite design differences

that could be used to justify a subcategory. However, we identified several design differences, including the need for steam atomization or high-pressure atomization of heavy liquids, the need for heated storage vessels for heavy liquids in some climates, and the lack of a demonstration that the new source PM limit based on combustion of light liquid fuels had been achieved by any unit combusting heavy liquid fuels. Therefore, the EPA is proposing separate subcategories for heavy liquid-fired and light liquid-fired units for PM and CO, pollutants that are dependent on combustor design. Units designed to combust light and heavy liquids will continue to be grouped together in a liquid fuel subcategory for Hg and HCl, which are the fuel-based pollutants. Light liquids include distillate oil, biodiesel and vegetable oil. Heavy liquids include all other liquid fuels that are combusted in boilers, including byproduct liquid fuels generated at industrial facilities and residual oil. Units that combust any liquid fuels (and less than 10 percent coal/solid fossil fuel and less than 10 percent biomass/bio-based solid fuel) where at least 10 percent of the heat input from liquid fuels on an annual heat input basis comes from heavy liquids would be considered heavy liquid units. Units that combust any liquid fuels (and less than 10 percent coal/solid fossil fuel and less than 10 percent biomass/bio-based solid fuel) that are not part of the unit designed to burn heavy liquid subcategory would be considered light liquid units.

3. *Non-Continental Liquid Units.* The EPA finalized a subcategory for non-continental liquid units. Stakeholders did not have the opportunity to comment on this subcategory. Therefore, the EPA is now soliciting comments on the non-continental liquid unit subcategory. The preamble to the final rule presents the rationale for the establishment of the subcategory. *See* 76 FR 15635. The EPA also is proposing to revise several of the emission limits for non-continental liquid units due to the receipt of new emissions data for PM and CO from these units and the development of performance estimates based on the combustion of No. 6 fuel oil (rather than all types of liquid fuels). The rationale for estimating the performance of these units based on data from No. 6 oil units is presented below. Petitioners pointed out that non-continental units do not combust distillate oil because of availability issues. While non-continental liquid units typically combust refinery gas, they combust residual oil when process requirements necessitate supplementing the available refinery gas. The petitioners requested that, in the absence of data from non-continental units, emission limits for non-continental units be based on data from liquid units that combust residual oil. The EPA agrees that it would be appropriate to make this change for the combustion-based pollutants due to the design of these units and the unique constraints faced by these units. We now have data for both CO and PM from non-continental units, and there are no longer data gaps for these pollutants. We are thus able to establish numeric emission limits using data from within the subcategory. For fuel-based pollutants, Hg and HCl, the EPA determined that, based on the very limited data sets and the overlap of data for units designed to combust various liquid fuels, it is more appropriate to consider all liquid fuel-fired units together for the development of MACT emission limits. This is consistent with the treatment of Hg and HCl for solid fuel units.

4. *Liquid Units in Alaska.* A petitioner requested that liquid units in Alaska be included in the non-continental liquid unit subcategory or in a separate, newly created subcategory for units in Alaska. The petitioner stated that units in Alaska face the same difficulties with respect to the available supply of natural gas or refinery gas as the non-continental units. The commenter did not provide specific design differences from other types of liquid units. In addition, no test data are available for liquid-fired units in Alaska. Finally, while units in Alaska may face some unique constraints, the design of such units is different from the non-continental units because the units are designed to combust different fuels (*i.e.* non-continental units combust No. 6 fuel oil, which was not reported as a fuel for any unit in Alaska in the responses to the EPA's information collection request). For these reasons, the EPA is not proposing a subcategory for liquid units in Alaska and is not including these units in the non-continental subcategory. The EPA is, however, soliciting comment and supporting rationale on whether a subcategory for liquid units in Alaska is appropriate, and is requesting stack test data that could be used to establish MACT floors if such a subcategory is justified.

5. *Biomass.* Petitioners requested additional biomass subcategories and clarifications to the final subcategories. Suggestions included separate subcategories (for all pollutants) for boilers that are designed to combust kiln-dried wood and for hybrid suspension grate boilers designed to combust bagasse, clarification of which subcategory covers pile burners, and separation of the dutch oven and suspension burner subcategories. In addition to soliciting comment on the proposed changes described below, the EPA is requesting comment on whether additional subcategories are appropriate, as well as data and rationale in support of any additional subcategories.

a. *Boilers Designed to Combust Kiln-Dried Wood.* With respect to a separate subcategory for boilers designed to combust kiln-dried wood, the EPA is proposing a separate subcategory for these units based on the design of the boilers and the unique nature of the facilities that combust this material. These facilities are carefully integrated to utilize their available resources on-site, and the boilers are designed and sized to efficiently combust biomass that has already undergone a drying process that enhances the fuel quality. Care is taken within the facility to maintain the fuel moisture content at levels far lower than virgin biomass materials, typically less than 2 percent moisture. The EPA is proposing emission limits for PM and CO for this subcategory of units that we are calling biomass dry stokers. For HCl and Hg, the final rule's approach of regulating these pollutants under the ''solid fuel subcategory'' for all solid fuel units has not changed.

b. *Hybrid Suspension Grate Boilers Designed to Combust Bagasse.* In the final rule, the EPA added a subcategory for hybrid suspension/grate boilers, which included boilers that are designed to combust very wet biomass fuels such as bagasse. The rationale for the establishment of the subcategory is presented in the preamble to the final rule. *See* 76 FR 15634–15635. Petitioners pointed out that in addition to their unique designs that provide fuel drying within the combustor, these units are highly integrated into the sugar production process and primarily combust specific materials that are generated on-site. Petitioners emphasized that the particle size profile from these units differs significantly from units designed to combust other types of fuels. As discussed in section V.C.1 of this preamble, the EPA is now considering PM to be a ''combustion based'' pollutant. Accordingly, the EPA is proposing emission limits for PM (along with an alternate TSM standard) and CO for these types of units. For HCl and Hg, the final rule's approach of regulating these pollutants under the

''solid fuel subcategory'' for all solid fuel units has not changed.

c. *Clarification of Subcategories for Pile Burners, Dutch Ovens, and Suspension Boilers.* The final rule did not address pile burners, and it established a single subcategory that covered dutch ovens and suspension boilers. Petitioners pointed out that dutch ovens and suspension boilers are inherently different types of boilers and requested EPA to create separate subcategories for those types of units. Petitioners also pointed out that pile burners are very similar to dutch ovens, and, as such, should be included in the dutch oven subcategory. The EPA evaluated these clarification requests and determined that the petitioners' points regarding the design and other differences between dutch ovens and suspension boilers are valid. The EPA agrees that dutch ovens and pile burners should be included in the same subcategory and suspension burners should be a separate subcategory. Therefore, the EPA is proposing separate emission limits for the combustion-based pollutants for these subcategories. All of these types of units will remain in the solid fuel subcategory for the fuel-based pollutants.

6. *Gaseous Fuel Specification.* Multiple petitioners requested reconsideration of the fuel specification that the EPA finalized but did not propose. Petitioners correctly pointed out that the levels of the fuel specification were based only on natural gas and suggested that it would be appropriate to base the fuel specification on levels of contaminants in either natural gas or refinery gas. Petitioners further pointed out that a fuel specification for hydrogen sulfide (H_2S) is not directly related to potential HAP emissions from boilers and process heaters and the H_2S fuel specification should be eliminated from the rule. The EPA has reexamined the fuel specification and agrees that the key contaminant for demonstration of comparability from a HAP perspective is Hg and that the H_2S fuel specification that was finalized does not provide a direct indication of potential HAP from combustion of gaseous fuel. Accordingly, the EPA is proposing a fuel specification based only on the Hg level in the gaseous fuel, and that level is the same level that the EPA included in the March 2011 final rule. The rationale for the Hg fuel specification is included in the preamble to the final rule. *See* 76 FR 15639.

One petitioner stated that the inclusion of a fuel specification demonstrates that emissions can be measured from the units that combust the gaseous fuels, and therefore, the units cannot be regulated by a work practice standard. Regarding this point, the EPA recognizes that the contaminants in the fuel may be able to be measured, but the resulting emissions from combustion of the fuel are another matter entirely. For instance, a unit that combusts a fuel that meets the fuel specification for Hg will have demonstrated that its fuel contains an amount of Hg that is comparable to that found in natural gas. The emissions data for natural gas-fired units show the overwhelming majority of emissions to be below the level that can be accurately quantified by the available test methods. Therefore, the same is expected of units combusting gases with similar contaminant levels to natural gas. Thus, a work practice standard is the appropriate standard for these units. The EPA also is requesting comment on whether additional parameters should be included in the fuel specification.

7. *Work Practices for Limited-Use Units.* The EPA added a subcategory for limited-use units in the final rule, and petitioners requested an opportunity to comment on the creation of the subcategory and the definition of the subcategory. Specifically, multiple petitioners requested that rather than defining the subcategory to include units that operate less than 10 percent of the hours in a year, the EPA define the subcategory to include units that operate with a capacity factor of 10 percent or less. The petitioners believe that such a change would provide more flexibility, but petitioners did not provide support that such a subcategory would qualify for work practice standards under section 112 the CAA. Therefore, the EPA is not proposing a change to the final approach but is requesting comment on how a subcategory defined with a 10 percent capacity factor would qualify for work practice standards in lieu of emission limits. The EPA also is requesting comment on the limited-use subcategory as finalized, and the rationale for the creation of that subcategory can be found in the preamble to the final rule. *See* 76 FR 15634.

D. Monitoring

1. Oxygen monitoring. Petitioners requested reconsideration of the requirement for installation of oxygen monitoring systems on the outlet of the boiler combustion chamber for numerous technical reasons. Several parties expressed concern regarding this location as it is known to be highly stratified, making it very difficult to find a representative location and certify the instrumentation. In reviewing alternatives to this requirement we find that rather than requiring monitoring of oxygen levels in the stack that follows a combustion unit, a better way to ensure good combustion is by requiring the installation, calibration, monitoring and use of oxygen trim systems to optimize air to fuel ratio and combustion efficiency. We agree with petitioners that use of the data from such devices is not only an appropriate control for efficient combustion and a less burdensome alternative to monitoring stack oxygen concentration but also is a better system for many types of units that experience significant load swings and operate with high levels of excess air. Many units are already fitted with these controls, and this proposed change will reduce the monitoring burden for affected units. These systems will provide adequate combustion control to maintain compliance with the CO emission levels demonstrated during the performance test. We seek comment on the appropriateness of using these controls operated as, and for the purposes, described.

2. *PM CEMS.* Petitioners requested reconsideration of the use of PM CEMS as compliance monitors for coal, biomass and residual oil units with heat input capacity greater than 250 MMBtu/hr. Petitioners emphasized that PM CEMS are not demonstrated for biomass units and requested EPA to remove the requirement because of technical issues related to PM particle size and the inability of PM CEMS effectively measure PM from biomass units. Petitioners also stated that PM CEMS are not demonstrated at the low levels that are required by the rule. The EPA agrees that PM CEMS are not demonstrated for biomass units and that significant technical concerns exist regarding the technology's ability to monitor emissions from biomass units. The technical concerns include the fact that PM CEMS are calibrated and certified to measure emissions from a single fuel type. A change in fuel would require a change in the calibration curve of the PM CEMS instrument. The unpredictable variety of biomass fuel constituents as well as biomass fuel moisture content make relying on a single calibration point problematic in terms of compliance assessment when these fuel components change. Furthermore, it is impracticable to replicate, during performance testing, all of the varying fuel conditions necessary for calibrating the monitor. For all of these reasons, it is impractical to appropriately apply PM CEMS to provide the accuracy necessary for

compliance assessment. Accordingly, we are proposing to remove the PM CEMS requirement for biomass units.

Relative to application for other boiler units, several parties expressed concern over the state of readiness of current PM CEMS technology, certification methodology and the technical effort and cost required for the recertification necessary to handle changing fuel and control operating conditions. In our reevaluation of this technology we find that PM monitoring technology would best be employed as parametric monitors (PM CPMS) and used to determine compliance with operating limits rather than emissions limits. This approach reduces the burden of certification of the monitor, which can be a substantial annual cost, and maintains our goals of seeking continuous data monitoring of the source particulate mass emission rate as a 30-day rolling average. We seek comment on the use of these monitors as described in the rule.

3. *CEMS Alternative for Hg.* Petitioners requested reconsideration of the absence of an option to use Hg CEMS for compliance demonstration and monitoring for units subject to Hg limits whose operators do not want to rely on periodic testing, fuel sampling analysis, and parameter monitoring. We have included options in the proposed rule for the use of Hg CEMS. We seek comment on the use of these monitors as described in the rule.

4. *Use of sulfur dioxide* (SO_2) *CEMS for demonstrating continuous compliance with HCl emission limits.* A petitioner requested that the EPA consider adding a provision to the rule to allow for the use of SO_2 CEMS for demonstration of continuous compliance with the HCl emission limits for sources that are equipped with acid gas controls. While the EPA does not have enough information to propose specific requirements, we believe that a reasonable approach would be to allow for the use of SO_2 CEMS provided that the source demonstrates a correlation between SO_2 control and control of other acid gases emitted from each specific unit that chooses to use SO_2 CEMS. Such a relationship is expected because the available add-on controls for acid gases would provide better control efficiencies for the acid gas HAP than for SO_2, and, therefore, demonstration of SO_2 control using CEMS would provide assurance that the acid gas HAP are being controlled. Therefore, the EPA is soliciting comment on the use of SO_2 CEMS for demonstrating continuous compliance with the HCl emission limits with the condition noted above.

5. *Minimum Data Availability Provisions.* Petitioners noted that the requirement to operate any CMS and collect data at all times is unrealistic and that the agency should include a reasonable minimum data availability limitation allowing for CMS downtime. We have not included any specific minimum data availability requirement for CEMS or other monitoring in the final rule. We disagree with petitioners that we are establishing unreasonable monitoring operating requirements with this rule. Instead, we believe that we are reiterating the source owner's responsibility to operate and maintain the CMS in accordance with existing rules. For example, section 63.8(c) already requires that the source operate the CMS consistent with good air pollution control practices and that the CMS be in continuous operation in accordance with a written quality control program. The final rule clarified that continuous operation does not include periods when the process is not operating and the requirements delineated in the rule otherwise mirror other existing requirements in the MACT general provisions. We do agree with petitioners that a CMS must undergo periodic system inspections, preventive maintenance, and parts replacements in order to continue good operation. It is clear that these events are among normal scheduled quality control events that would be included in the site-specific quality control program that is required under section 63.8(d)(2)(iii) to which the source owner is subject. We also agree that such periods are to be categorized as exceptions to CMS data collection that are already allowed in the rule. Given the existing regulatory requirements and the clarifications in this rule about how to apply those requirements, we believe the rule provides allowances sufficient for CMS operational flexibility and are therefore not proposing any revisions on this issue.

6. *Averaging Times.* The EPA has determined that a 30-day rolling average for parameter monitoring and demonstration of continuous compliance with operating limits is appropriate for this rule. This would be a change from the final rule, which generally included 12-hour block averages that corresponded to the expected length of the longest duration 3-run emission test that was required to demonstrate initial compliance with the emission limits. The operating limits established through performance testing in this rule represent short term process and control operating conditions representative of compliance. Concerns of variability outside the operators control such as fuel content, seasonal factors, load cycling, and infrequent hours of needed operation prompted us to look at longer averaging periods on which to base operating compliance determination. We are aware from studies of emissions over long averaging periods that long term (*e.g.,* 30-day) average emissions for a operating in compliance will have a variability of about half of that represented by the results of short term testing. Given that short term tests are representative of distinct points along a continuum of that inherent operational variability, we believe it appropriate to propose 30-day averages in order to provide a means for the source operator to account for that variability by applying a long term average for establishing compliance. We expect more problematic control system variability (*e.g.,* ESP transformer failure or scrubber venturi fan failure) to result in deviations from a 30-day average relative to compliance almost as much as for a shorter term average.

E. Emission Limits

1. *Additional Data Received.* The EPA received additional data from stakeholders and incorporated all of the data into the MACT database. The new data include 36 Hg test runs, 168 p.m. test runs, 24 dioxin/furan test runs, 133 CO test runs, 63 HCl test runs, and 22 TSM test runs. In addition to the stack test data, the EPA received fuel analyses for 3 facilities and over 51,000 hours of CO CEMS data from 3 facilities. Finally, stakeholders submitted corrections to data and to descriptions of combustion units. We have incorporated these corrections into the project database. For details on the new data and data corrections, see the memorandum in the docket entitled ''Revised Handling and Processing of Corrections and New Data in the EPA ICR Databases (October 2011).''

2. *Quality Assurance Activities on Best Performers.* The EPA requested copies of all of the emission test reports for the best performing units in each subcategory in order to perform additional quality assurance. These test reports document the test results for the summary test data that were submitted to the EPA as part of the EPA's Phase 1 information collection request. This review resulted in multiple changes to data and invalidation of some emission tests. Overall, this effort improved the quality of the data provided by industry. For details on the quality assurance effort, see the memorandum in the docket entitled ''Data Quality Review of Best Performers for PM, Hg, HCl, CO, and Dioxin/Furan Emissions from ICI

Boilers and Process Heaters at Major Sources of HAP (October 2011).''

3. *Incorporation of Minimum Detection Levels and Measurement Imprecision.* In developing the final rule, the EPA incorporated procedures to ensure that the available measurement methods would provide accurate emissions measurements at the levels set for the various standards. The preamble to the final rule described these procedures, but stakeholders did not have an opportunity to comment on them. The EPA has made minor adjustments to the methods used to account for measurement imprecision and presents the rationale in the following paragraphs. We are soliciting comment on the procedures described below.

Test method measurement imprecision is a contributor to the variability of a set of emissions data. One element is associated with method detection capabilities, and a second is a function of the measurement value. Measurement imprecision is proportionally highest for values measured below or near a method's detection level; measurement imprecision proportionally decreases for values measured above the method detection level. The probability procedures applied in calculating the floor or an emission limit inherently and reasonably account for emissions data variability, including measurement imprecision, when the database includes multiple tests from multiple emissions units for which all data are measured significantly above the method detection level. This is less true when the database includes emissions occurring below method detection capabilities that are reported as the method detection level values.

The EPA's guidance to data collection respondents for reporting pollutant emissions specified the criteria for determining test-specific method detection levels. Under those criteria, about a 1 percent probability of an error exists that a pollutant measured at the method detection level is present when in fact it is absent. Such a probability is also called a false positive or the alpha, Type I, error. Because of sample and emissions matrix effects, laboratory techniques, sample size, and other factors, method detection levels normally vary from test to test for any specific test method and pollutant measurement. The expected measurement imprecision is 50 percent or greater. Pollutant measurement imprecision decreases to a consistent relative 10 to 15 percent for values measured at a level about three times the method detection level.[2] Also in accordance with our guidance, source owners identified emissions data which were measured below the method detection level and reported those values as equal to the method detection level as determined for that test. One effect of reporting data in this manner is that the resulting database is somewhat truncated at the lower end of the measurement range (*i.e.,* no values reported below the test-specific method detection level). A floor or emissions limit that is based on a truncated database or otherwise includes values measured near the method detection level may not adequately account for the effects of measurement imprecision on the data variability.

We applied the following procedures to account for the effect of measurement imprecision associated with a database that includes method detection level data. In response to the comments and internal concerns about the quality of measurements at very low emissions limits especially for new sources, we revised the procedure for identifying a representative detection level (RDL). The procedure for determining an RDL starts with identifying all of the available reported pollutant specific method detection levels for the best performing units regardless of any subcategory (*e.g.,* existing or new, fuel type, *etc.*). From that combined pool of data, we calculate the arithmetic mean value. By limiting the data set to those tests used to establish the floor or emissions limit (*i.e.,* from the best performers), the result also represents the best performing testing companies and laboratories, and data from underperforming laboratories are effectively removed from the floor analysis. The outcome should minimize the effect of a test(s) with an inordinately high method detection level (because, for example, the sample volume was too small, the laboratory technique was insufficiently sensitive, or the procedure for determining the detection level was other than that specified). We then call the resulting mean of the method detection levels as the RDL as characteristic of accepted source emissions measurement performance.

The second step in the process is to calculate three times the RDL to compare with the calculated floor or emissions limit. This step is similar to what have used before including for the Portland cement MACT determination. We use the multiplication factor of three to approximate a 99 percent upper confidence interval for a data set of seven or more values. For comparing to the floor, if three times the RDL were less than the calculated floor or emissions limit (*e.g.,* calculated from the upper prediction limit (UPL)), we would conclude that measurement variability was adequately addressed. The calculated floor or emissions limit would need no adjustment. If, on the other hand, the value equal to three times the RDL is greater than the UPL, we would conclude that the calculated floor or emissions limit does not account entirely for measurement variability. In this situation, we substituted the value equal to three times the RDL for the calculated floor or emissions limit.

We determined the RDL for each pollutant using data from tests of all the best performers for all of the final regulatory subcategories (*i.e.,* pooled test data). We applied the same pollutant-specific RDL and emissions limit adjustment procedure to all subcategories for which we established emissions limits. We believe that emissions limits adjusted in this manner better ensure that measurement variability is adequately addressed relative to compliance determinations than did the procedure applied for calculations in the June 4, 2010, proposed rule that may have been based on data sets smaller than seven tests and as few as one test. We also believe that the emissions testing procedures and technologies available now and in the future will be adequate to provide the measurement certainty sufficient for sources to demonstrate compliance at the levels of the adjusted emissions limits.

4. *CO CEMS-Based Alternative Emission Limits and Monitoring.* As an alternative to CO stack testing and oxygen monitoring, we are proposing a compliance option that allows the use of CO CEMS. Some petitioners noted that some affected sources currently use CO CEMS and that installing additional monitoring equipment should not be required if a unit elects to comply using existing CO CEMS equipment. In addition, petitioners stated that due to the highly variable nature of CO emissions, an emission limit based on CO CEMS data from boilers over time would more adequately capture the true variability in CO emissions over various operating conditions. In response to these requests, the EPA has calculated a CO CEMS-based MACT floor for each subcategory for which data were available. Facilities would have the option to comply with the alternative

[2] American Society of Mechanical Engineers, Reference Method Accuracy and Precision (ReMAP): Phase 1, Precision of Manual Stack Emission Measurements, CRTD Vol. 60, February 2001.

CO CEMS-based limits through monitoring with CO CEMS. Through the Section 114 Information Collection Requests and additional voluntary data submittals, a limited amount of CEMS data was available to compute CO CEMS limits. Most sources that reported CEMS data had 30 days of data either reported as hourly or daily averages. Given this limited length of time, we selected a 10-day rolling averaging period in order to allow us to compute multiple data points from each source's dataset. If sources reported CEMS data on both an hourly and daily average basis, we first computed daily averages from the hourly data. Next, we combined the two datasets, sorted the data in sequential calendar data order and computed a series of 10-day rolling averages from each unit. CEMS data on a 10-day rolling average basis could be calculated for the following subcategories: fluidized bed units designed to burn coal/solid fossil fuel, pulverized coal boilers designed to burn coal/solid fossil fuel, stokers designed to burn coal/solid fossil fuel, dutch ovens/pile burners designed to burn biomass/bio-based solids, fluidized bed units designed to burn biomass/bio-based solids, hybrid suspension grate boiler designed to burn biomass/bio-based solids, stokers/sloped grate/others designed to burn wet biomass fuel, suspension burners designed to burn biomass/bio-based solids and units design to burn heavy liquids. CO CEMS data on a 10-day rolling average basis data were not available for the fuel cell units designed to burn biomass/bio-based solids, biomass dry stoker units, and units designed to burn gas 2 (other) gases. Alternate CO CEMS-based limits are not being proposed for these units, but if data are provided for those subcategories prior to March 1, 2012, those data will be considered for use in the final rule. A very limited amount of CEMS data were available from units designed to burn light liquid fuel and units designed to burn liquid fuel located in non-continental States and territories, but not enough data points were available to compute a 10-day rolling average. We do have data sufficient to develop CO CEMS-based limits on a 1-day block average basis for light liquid units and a 3-hour rolling average basis for non-continental liquid units, as discussed below. If sufficient additional data are provided by March 1, 2012, the EPA will consider adjusting the averaging times similar to the other emission limits.

In most cases, only one or two units in each subcategory have CO CEMS data available. The memorandum ''CO CEMS MACT Floor Analysis (October 2011) for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants—Major Source'' provides a complete breakdown of the CO CEMS data that were available. The EPA is requesting the submittal of additional CO CEMS data to achieve a more robust dataset for the purposes of revising the CO CEMS MACT floor calculations. Please provide your dataset in an electronic spreadsheet or database format with the data reduced to hourly CO averages reported as ppmvd. You should include the oxygen associated with each measurement or report the data at a standardized oxygen concentration, preferably adjusted to 3 percent oxygen. The EPA is expecting to receive additional CEMS data before the final rule and to incorporate those data if received in time. The data will likely change the CO CEMS floors, and may also result in different averaging times, depending on the extent of the data.

In order to identify the dataset that would be used to compute a CO CEMS MACT floor emission limit, the EPA first identified all of the units identified as best performers based on their reported stack test results that had 10-day rolling average CO CEMS data available. Refer to the memo ''Revised MACT Floor Analysis (October 2011) for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants—Major Source,'' for more information on how the best performing CO stack tests were identified for each subcategory. However, there was very little overlap in the number of best performing units that had both stack test and CO CEMS data available. After comparing the data, only three subcategories would have best performing units with both stack test and applicable CEMS data. Given these data gaps, we opted to rank CO CEMS data based on each units minimum 10-day rolling average CO CEMS value and then determining the best performers for each subcategory. For the three subcategories where we have CEMS data for units that are part of the stack test-based MACT floors, we included the CEMS data from those units in the CEMS-based floors because those units are demonstrated best performers for CO. We discuss two exceptions below, where the data did not allow the use of a 10-day averaging period. Within each subcategory, we ranked the minimum 10-day rolling averages from lowest to highest to determine the best performing 12 percent. Then, we identified any best performers based on the CO stack test data that provided CO CEMS data, and we included those data in the MACT floor pool. Next, we used all of the daily averages from the best performing units to compute a MACT floor based on a 99 percent UPL.

For the units designed to burn light liquid fuels, the data were insufficient to calculate 10-day rolling averages. Based on the available data, the averaging basis selected was 1 day. For the units designed to burn liquid fuel in the non-continental liquid units subcategory, the data were insufficient to calculate 10-day rolling averages. Based on the available data, the averaging basis selected was 3 hours for non-continental liquid units. Only one of the non-continental boilers submitted CO CEMS data, with a total of 24 hourly averages. In this case, we used each of the hourly averages from this unit to compute a MACT floor based on a 99 percent UPL. The EPA is aware that the averaging time selection and whether rolling or block averaging is selected impacts the UPL calculation and ability to demonstrate compliance. We believe that the averaging times selected for this proposal are reasonable and note that, to some extent, they are dictated by the limited datasets. The EPA is requesting comment on the most appropriate averaging time (*e.g.,* hourly, daily) and length of rolling period (*e.g.,* 10-day, 30-day) to use when calculating the CO CEMS MACT floors and requests specific discussion and new data to support your comments. The length of the averaging time will be affected by the available data in each subcategory. The EPA also is requesting comment on the approach used to calculate the UPL-based MACT floors.

Ranking the dataset according to the minimum 10-day rolling average does not necessarily correlate with the ranking used to identify the best performing 12 percent of units with CO stack test data used to calculate the stack test-based floors for CO. Separate sets of units in the stack test and CEMS data sets create the possibility of incongruent results between the two compliance options. To evaluate whether our selection of the units identified as best performers for CO CEMS data correlates to the units identified as best performers for stack test data, we compared the CEMS data and the computed stack test CO MACT floor for each subcategory. Each unit identified as a best performing unit in the CO CEMS analysis had at least one 3-hour CEMS average at or below the corresponding stack test CO MACT floor for the subcategory, which suggests that

the units identified as best performers based on the CEMS data are comparable to the units identified as best performers based on the stack test data. The EPA specifically requests comment on the ranking methodology which should be used, with discussion on whether CO CEMS best performers should be selected from units also identified as best performers from their stack test data, or if a value other than the minimum 10-day rolling average should be used as the basis for ranking the data.

Given the limited data available, the proposed new source CO CEMS floors are similar to existing source floors since the existing source CO CEMS UPL for each subcategory was determined using data from a single unit, with two exceptions. The fluidized bed units designed to burn biomass/bio-based solids and stokers/sloped grate/others designed to burn wet biomass fuel each have two units in the existing source floor calculations, whereas the new source floor would be based on the single best performer. In the case of wet biomass stoker/sloped grate/other, the computed new source floor would be higher than the existing source, so the value reverts to the existing source value.

The 99 percent UPL calculations for CO CEMS used the following statistical formula:

$$UPL = \bar{x} + t(0.99, n-1) \times \sqrt{s^2 \times \left(\frac{1}{n} + \frac{1}{m}\right)}$$

Where:

n = the number of daily averages (or hourly averages for non-continental units)

m = the number of test runs in the compliance average

In this case, m equals 10 given the 10-day rolling average compliance period for all subcategories except for non-continental liquid, where m equals 3 for the 3-hour averaging period. Similar to previous analysis of the distribution of the dataset for stack test data MACT floor calculations, the distribution of each CEMS dataset was classified as either a normal distribution or log-normal distribution. In the case of the CEMS datasets from each of the best performers, the datasets were each log-normally distributed. See the ''CO CEMS MACT Floor Analysis (November 2011) for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants—Major Source'' for further details about the calculations.

For each subcategory the analysis showed that the datasets were lognormally distributed. Given the rolling-average compliance metric, many of the datasets also exhibit varying degrees of autocorrelation. Autocorrelation describes the correlation between values of the process at different points in time. Although the UPL calculation is affected by autocorrelation, no adjustments were made to incorporate autocorrelation in this dataset. Depending on the final compliance metric selected, EPA may adjust the dataset for the promulgated rule to better address autocorrelation. The EPA is requesting comment on incorporating autocorrelation into the analysis.

The EPA considered, but is not proposing, an additional final step for establishing the CO CEMS-based floors. When we compared the performance of the units in the top half of the MACT floor pool (usually a single unit) to the UPL-based floor level, it was revealed that the calculated UPL-based floor level resulted in the best performing units in some subcategories not meeting the limit up to about 25 percent of the time. The following final step in the floor setting process for CEMS-based limits could be used to adjust the CO CEMS-based limits to reflect the level achieved at all times by the best performing sources (*i.e.,* the top half of the MACT floor units). In those instances where the best 6 percent of units did not meet the calculated limit at all times, the limit was adjusted to reflect the actual level that was demonstrated to be achieved at all times by those units (the highest 10-day, 1-day, or 3-hour average, as applicable, from the best 6 percent of units). The CO CEMS-based emission limits based on this approach are shown in Table 2 of this preamble. The EPA is requesting comment on whether this final step is appropriate for developing CO CEMS-based MACT floors for boilers and process heaters.

TABLE 2—ALTERNATIVE APPROACH CO CEMS-BASED EMISSION LIMITS FOR BOILERS AND PROCESS HEATERS

Subcategory	Alternate CO CEMS limit, (ppm @3% oxygen)
New and Existing—Coal Stoker	34
New and Existing—Coal Fluidized Bed	78
New and Existing—Coal-Burning Pulverized Coal	35
New and Existing—Biomass Wet Stoker/Sloped Grate/Other	920
New and Existing—Biomass Kiln-Dried Stoker/Sloped Grate/Other	(1)
New and Existing—Biomass Fluidized Bed	480
New and Existing—Biomass Suspension Burner	2,300
New and Existing—Biomass Dutch Ovens/Pile Burners	440
New and Existing—Biomass Fuel Cells	(1)
New and Existing—Biomass Hybrid Suspension Grate	1,400
New and Existing—Heavy Liquid	18
New and Existing—Light Liquid	60
New and Existing—non-Continental Liquid	120
New and Existing—Gas 2 (Other Process Gases)	(1)

[1] No data.

F. MACT Floor Methodology

1. *Standards for Dioxin/Furans.* Petitioners requested that EPA revise the procedure used to calculate the final emission limits for dioxin/furans, with the primary issue being the low levels and how detection limits should be considered. The EPA re-assessed the lowest level that can be accurately measured for dioxin/furan emissions from boilers and process heaters. When we compared those levels to the levels of emissions from all of the units that had test data available, we found that for all subcategories of units, emissions were below the value that can be accurately measured. Details on the establishment of the level that can be accurately measured are provided in the docket memorandum entitled: Updated data and procedure for handling below detection level data in analyzing various pollutant emissions databases for MACT and RTR emissions limits. As discussed in section V.A.2 of this preamble, the EPA is now proposing to regulate dioxin/furan emissions with a work practice standard in lieu of numeric emission limits.

2. *Filling Data Gaps for Non-Continental Liquid Units.* The EPA included numeric emission limits for non-continental liquid units in the final rule. However, data were not available for all of the regulated pollutants, and EPA relied on the MACT floors for liquid units to establish some of the emission limits. Petitioners requested that in cases where data gaps exist, a more appropriate substitution would be to establish floors based on units that combust No. 6 fuel oil, which is the fuel that the non-continental units are designed to combust. While the EPA agrees that for estimating emission from these units, use of data from No. 6 oil-fired units may be appropriate even though some design differences have been identified (see FR 76 15635, March 21, 2011), we are proposing a different approach for setting emission limits for non-continental liquid units. Additional data were submitted to EPA for PM and CO from non-continental units, and the proposed PM and CO limits are based on these data from within the subcategory. For HCl and Hg, which are considered fuel-based pollutants that are not dependent on combustor design, the EPA is proposing to base limits for all liquid units on the entire data set from liquid-fired units. The currently available data and information do not indicate that Hg and HCl should be considered separately for liquid units designed to combust various types of liquids, and we therefore are proposing Hg and HCl emission limits that are based on the available data for all liquid units. The EPA requests comment on this approach, and to the extent that other approaches are suggested, the EPA requests data and rationale to support any suggested alternative approaches.

3. *Selection of Confidence Level for CO.* In the final rule, the EPA selected the use of a 99.9 percent confidence interval for calculating the MACT floor for CO emissions. A petitioner requested reconsideration of this selection given the fact that the EPA used a 99 percent confidence interval for all of the other emission limits in the final rule. The petitioner pointed out that if the data are highly variable, the 99 percent confidence interval should adequately reflect the variability of emissions as well as for the data sets for other pollutants. In the development of the final rule, the 99.9 percent confidence interval was selected in part because the standards covered periods of startup and shutdown, while the data did not reflect CO emissions during those periods. While the EPA finalized work practice standards for startup and shutdown periods, the selection of the confidence interval was not revisited due to time constraints. The EPA is now proposing to use a 99 percent confidence interval in order to maintain a consistent methodology with the development of the MACT floors for other pollutants, and because optional CO CEMS-based limits are being proposed that would allow sources additional flexibility in meeting the requirements of the rule.

G. Tune-Up Work Practices

1. *Requirements for Small and Limited-Use Units.* Petitioners requested that the EPA reconsider the tune-up work practices for a subset of very small units. Specifically, petitioners requested that small natural gas- and light oil-fired units (petitioners defined ''small'' at various levels between 2 MMBtu/hr and 10 MMBtu/hr) be exempted from the rule. While the EPA disagrees that small units should be exempt from the rule, the EPA agrees that for the smallest natural gas-, refinery gas, other clean gas (that meets the fuel specification) and light liquid-fired units, decreased tune-up frequency is appropriate. The large number of small units that can be located at an individual facility, particularly an institution, provides logistical issues with completion of tune-ups on an annual basis. For instance, one institution has over 700 identical small natural gas-fired units that would, under the final rule, each be subject to a biennial tune-up requirement. We are proposing to change that requirement for natural gas-, refinery gas, other clean gas (that meets the fuel specification) and light liquid-fired units equal to or less than 5 MMBtu/hr to a tune-up once every 5 years, with the initial tune-up required by the compliance date and subsequent tune-ups being required at intervals no greater than 5 years from the previous tune-up.

2. *Clarifications of Certain Tune-up Provisions.* Petitioners requested several changes to the tune-up requirements and timing of completing the various aspects of tune-ups. The issues and the EPA's proposed responses, are presented in the following paragraphs.

First, petitioners questioned the requirement that burner inspections (part of the tune-up) must be completed at least once every 36 months, even if this requirement causes a unit to be shut down that otherwise would not have been. The EPA agrees that the burner inspection should not cause units to shut down and is proposing to remove the ''every 36 months'' requirement. Instead, we are proposing that burner inspections that cannot be completed during a tune-up can be delayed until the next scheduled shutdown.

Second, petitioners requested that CO adjustments that are required as part of a tune-up be allowed to be completed within 30 days of the tune-up in order to allow for multiple adjustments and optimization of CO emissions. The EPA agrees that this is a reasonable change and is proposing to allow 30 days from the date the tune-up is completed.

Third, the EPA included a burner inspection requirement that is difficult or impossible for certain units to meet. The EPA is proposing to clarify this provision so as not to require a physical inspection that cannot reasonably be completed.

3. *Conducting Initial Tune-ups at New Sources.* Petitioners requested that the EPA clarify the timing of tune-ups with respect to the compliance dates for existing and new sources. For new units, the EPA recognizes that, as petitioners pointed out, units are generally tuned as part of installation, but a learning curve exists for how to most efficiently operate new units. Accordingly, the EPA is proposing that the initial tune-up after startup must be completed within one year of startup.

H. Energy Assessment

1. *Scope.* Petitioners requested that the EPA clarify the scope of the energy assessment. Specifically, petitioners requested that the scope be clearly limited to only those energy use systems that are located on-site and associated with the affected boilers and process heaters. The final definition for ''Energy

use system'' was intended only to list examples of potential systems that may use the energy generated by affected boilers and process heaters. We did not intend that the energy assessment would include energy use systems using electricity purchased from an off-site source. We also did not intend that the energy assessment include energy use systems located off-site. We are proposing to revise the definition of ''Energy assessment'' to clarify our intent.

2. *Compliance Date.* Petitioners requested that the EPA clarify the due date of the energy assessment. All emission standards must be met by the compliance date, even if compliance demonstrations are sometimes allowed after the compliance date. In order to meet the requirements of the rule, energy assessments must, therefore, be completed by the compliance date for existing sources.

3. *Maximum Duration Requirements.* Petitioners requested that the EPA reconsider the stated ''maximum time'' to conduct the energy assessment because the maximum times were not included in the proposal, and stakeholders had no opportunity to comment. The concern raised by petitioners is that, as the final definition of ''Energy assessment'' is worded, a deviation and a potential violation could occur if the energy assessment effort exceeds these time limits. Our intent for including the ''maximum time'' in the final rule definition was to minimize the burden on the smaller fuel use facilities, many of which are likely small entities, by limiting the extent of the energy assessment. Our concern was that if there was no time limit, these small facilities would have no means to limit the time/effort of an outside energy assessor that is contracted to perform the energy assessment. We have revised the definition of ''Energy assessment'' to change the maximum time from 1 day to 8 technical hours and from three days to 24 technical hours. This would allow sources to perform longer assessments at their discretion.

I. Affirmative Defense Provisions During Malfunctions

The EPA finalized affirmative defense provisions for malfunctions. As part of this reconsideration proposal, we are soliciting comments on the affirmative defense provisions that were included in the final rule. The rationale for the affirmative defense provisions is provided in the preamble to the final rule. *See* 76 FR 15642.

J. Work Practices During Startup and Shutdown

1. *Work Practices.* The EPA finalized a work practice standard for periods of startup and shutdown that requires facilities to minimize emissions consistent with manufacturers' recommended procedures. Petitioners requested that the EPA clarify whether the requirement applies to the boiler or the control device manufacturer. The EPA is proposing to amend the work practice standard so that manufacturers' recommended procedures are no longer referenced, although the EPA expects that facilities will follow such procedures for both the boiler system and any air pollution control devices. The EPA is proposing to amend the work practice standard as described in section III.E of this preamble. The rationale for justifying work practice standards for periods of startup and shutdown is described in the preamble to the final rule. *See* 76 FR 15642. Additionally, we do not have emissions data for startup and shutdown periods sufficient to establish numeric emissions standards for these periods. The only available data is limited CO emissions data, which is unlikely to reflect actual emissions of the best performing units during startup and shutdown. The rationale for the proposed changes to the work practice standard is discussed below. The EPA is now proposing to define startup and shutdown periods and is proposing more specific requirements than those in the final rule. The definitions of startup and shutdown would provide clarity regarding which periods of operation are subject to the work practice standards rather than numeric emission limits and the associated requirements. The proposed definitions specify that only the periods of time between a complete shutdown of a unit (no fuel being combusted) and the time that a unit first reaches 25 percent load qualify as startup, and only the periods of time between the time that a unit last reaches 25 percent load and the time when a unit is completely shut down (no fuel being combusted) qualify as shutdown. These definitions are intended to ensure that units cannot cycle in and out of startup or shutdown. The EPA recognizes that it may be necessary to establish a maximum time period to ensure that units cannot operate in startup or shutdown mode for extended periods of time, and is soliciting comment on the appropriate time period or time periods for the various unit designs. The EPA believes that a work practice standard that applies during such periods should require more than a general duty to reduce emissions, which is essentially what was required in the final rule. General duty requirements do not constitute appropriate work practice standards under section 112(h). We are soliciting comment on the rationale for work practice standards during periods of startup and shutdown as well as the proposed work practice standard and the rationale for proposing changes to the standard. We also are soliciting comment on whether other work practices should be required during startup and shutdown, including requirements to operate using specific fuels to reduce emissions during such periods. Because the EPA did not propose work practice standards for startup and shutdown periods in the June 4, 2010, proposed rule, members of the public did not have the opportunity to comment on those standards or the rationale for the standards prior to issuance of the final rule.

2. *Operating Parameters and Opacity Limits.* Petitioners requested that EPA clarify that the operating limits and opacity limits do not apply during periods of startup and shutdown. Having finalized work practice standards for these periods of time, EPA agrees that the requested clarification is what was intended in the final rule.

K. Applicability

1. *Exemption for Units Serving as Control Devices.* In the final rule, the EPA exempted any boiler or process heater that is used as a control device to comply with another subpart of part 63, provided that at least 50 percent of the heat input to the boiler is provided by the gas stream that is regulated under another subpart. Petitioners requested that EPA extend the exemption to units that serve as control devices for EPA standards issued under parts 60 or 61 of the CAA. We recognize that part 61 is another part relevant to the NESHAP program and should be treated the same as the exemption provided for part 63. Although part 60 does not regulate HAP, the EPA does want to continue to use combustion controls for organic pollutants that part 60 addresses, as it provides a pollution prevention strategy and reduces the need for facilities to install other combustion equipment to serve as dedicated control devices for NSPS and NESHAP regulated gas streams (*e.g.,* thermal oxidizers and flares). In addition, many of the potential add-on combustion technologies do not recover energy, and the resulting combustion using these technologies would emit approximately the same level of contaminants as a boiler without the added benefit of

energy recovery. Therefore, the EPA is now proposing to exempt any boiler or process heater that is used as a control device to comply with standards issued under part 60, part 61, or part 63 of the CAA, provided that at least 50 percent of the heat input to the boiler is provided by a gas stream that is subject to standards under those parts.

2. *Waste Heat Boilers and Process Heaters.* Petitioners requested that the EPA clarify that waste heat process heaters, like waste heat boilers, are not subject to the standards. Petitioners are correct that the EPA intended to exempt waste heat process heaters from the rule, and the EPA is amending the definition of process heater to exclude waste heat process heaters. We also are clarifying that waste heat boilers and process heaters can include supplemental burners as long as those burners combust only Gas 1 fuels, up to 50 percent of their heat input.

3. *Units Firing Comparable Fuels.* Petitioners requested that the EPA clarify whether boilers and process heaters burning comparable fuels, as defined under the Resource Conservation and Recovery Act (RCRA), are subject to the NESHAP for industrial, commercial, and institutional boilers and process heaters. Section 261.38 states that hazardous secondary materials (*i.e.,* spent materials, sludges and byproducts) that have fuel value and whose hazardous constituent levels are comparable to those found in fuel oil that could be burned in their place are not solid wastes and hence not hazardous wastes under Subtitle C of RCRA. These materials are called comparable fuels. Since comparable fuels are not hazardous waste, boilers and process heaters burning comparable fuels are not subject to the NESHAP for hazardous waste combustors (part 63, Subpart EEE), which includes boilers and process heaters that burn RCRA hazardous waste. Therefore, boilers and process heaters burning comparable fuels are covered by the NESHAP for industrial, commercial, and institutional boilers and process heaters.

4. *Residential Unit Exemption.* During the initial phases of implementation of the area source boiler rule, stakeholders requested clarification from the EPA on the applicability of the area source rule to residential boilers, particularly those units at individual residences located at institutional facilities. The EPA's intent was not to cover such units, and during reconsideration, the EPA is amending the area source rule accordingly. Similarly, the final major source rule could be interpreted to cover residential boilers at large institutions, which was not the intent of the rule. Accordingly, the EPA is proposing to exempt residential boilers from the rule and is proposing the following definition of residential boiler to the major source rule: *Residential boiler* means a boiler, used in a dwelling containing four or fewer family units, to provide heat and/or hot water. This definition includes boilers used primarily to provide heat and/or hot water for a dwelling containing four or fewer families located at an institutional facility (*e.g.,* university campus, military base, church grounds) or commercial/industrial facility (*e.g.,* farm).

L. Compliance

1. *Extending Compliance Dates.* On May 18, 2011, the EPA issued a stay of the effective date of the final rule. The EPA is proposing several revisions to the standards in this rule. As such, we are proposing to revise the compliance date for existing sources to three years after the date of publication of the final reconsideration rule. This date is being proposed in order to enable facilities sufficient time to install controls and make compliance-related decisions. For new sources, the EPA is proposing that the compliance date is 60 days after the date of publication of the final reconsideration rule, or upon startup, whichever is later. This date assumes that the final reconsideration rule will be subject to the Congressional Review Act, which will delay the effective date of the rule by 60 days. We are proposing to extend the compliance dates for all standards for several reasons. First, the proposed changes to the emission limits for units in every subcategory and the proposed use of work practice standards for dioxin/furan emissions for all subcategories will have a significant impact on the compliance strategies that are selected by the affected sources. For instance, the proposed changes in PM emission limits for existing biomass fluidized bed, hybrid suspension grate, and the newly proposed dry stoker subcategories would require different PM control selections than the emission limits finalized in March 2011. The proposed changes in Hg, HCl and PM emission limits for units designed to burn liquid fuels are likely to result in different compliance responses and control selections for all of these pollutants. For coal stoker units, the increased stringency of the proposed PM and HCl emission limits would require increased control efficiencies that, while not necessarily changing the types of controls needed, may impact the design of those controls. Second, when the EPA announced the reconsideration and postponed the effective date, it indicated to industry that requirements could change significantly. The resulting uncertainty has limited the ability of affected sources to begin making appropriate selections of control technologies and other compliance decisions. Even if significant changes were not being proposed, an extended compliance date would likely be necessary to provide enough time for facilities to achieve compliance. Third, most of the dioxin emission limits that were finalized in March 2011 were below the level that the EPA has now determined can be accurately measured using the required test method. This was pointed out by stakeholders who petitioned the EPA to move to a work practice approach because the levels of dioxin/furan were too low to accurately measure and resulted in a high degree of uncertainty regarding how to meet the limits. The uncertainty resulted in the inability of sources to select dioxin/furan control technology, and also prevented sources from selecting controls for other pollutants because the emission controls must be designed to work properly when operated together. For instance, if a source required an ESP for PM control but needed carbon injection to potentially meet a very low dioxin/furan emission limit, the source may choose a fabric filter for PM control instead of an ESP. Alternatively, if a source no longer needed carbon injection, the particulate loading to the PM control device would be decreased, which may result in a different design or possibly a selection of a different control technology. Finally, the EPA has received comments that the availability of control equipment and vendors to install control equipment for boilers is in question due to the large number of units requiring controls in conjunction with the parallel rulemaking for electric generating units that will require controls from many of the same vendors. While the EPA believes that the maximum time allotted under section 112, 3 years after promulgation along with an additional year for installation of controls that must be approved on a case-by-case basis by the permitting authority, provides enough time for boilers to achieve compliance, the EPA recognizes that maintaining the compliance dates from the March 2011 final rule would essentially provide less than 2 years for sources to meet the final standards, whose stringency will not be determined until the reconsideration is final. For all of the reasons discussed above, the EPA is proposing that the compliance date for existing sources is three years after the date of publication of the final reconsideration rule. The

EPA is requesting comment on the proposed changes to the compliance dates.

2. *Reduced Testing Frequency and Detection Levels.* In the final rule, the EPA changed the stack testing requirements to allow units that demonstrate compliance for a particular pollutant at a level at or below 75 percent of the emission limit for 2 consecutive years to forego stack testing for up to 37 months. The EPA is maintaining this provision for most of the emission limits and is soliciting comment on this provision. The EPA also included, in the final rule analyses, a method to ensure that emission limits are set at levels that can be measured by the available test methods. During the development of the rule, the EPA carefully considered comments regarding the very low levels of some of the finalized emission limits that were based on a level no less than 3 times the ''representative detection limit'' or RDL. In cases where the calculated MACT floors were lower than the 3 times the RDL value, the calculated floor value was replaced by the 3 times the RDL value. For these values, which again represent the lowest level that can be measured, units can qualify for skip testing by meeting the limit rather than a level that cannot be accurately measured.

3. *Fuel Analysis of Gaseous Fuels at Co-Fired Units.* Petitioners requested that the EPA clarify the fuel analysis requirements for co-fired units that combust Gas 1 fuels along with either solid or liquid fuels. The EPA is clarifying that Gas 1 fuels are not included in the fuel analysis requirement.

4. *Coal Sampling Techniques.* Petitioners requested that the EPA allow for automated coal sampling systems. The EPA did not intend to exclude these techniques in the final rule and is adding clarifying language to allow for automated coal sampling techniques.

M. Other Issues Open for Comment

1. Stakeholders asked the EPA to consider, for units that are retrofitted to switch to natural gas as a compliance option, allowing those units to average emissions with units of the original unit design. These parties suggested that continuing to allow such averaging would be consistent with EPA's general approach of specifying emission standards for affected facilities, but otherwise allowing the facilities to comply however they see fit. They also pointed out that this may allow for more effective controls overall. For example, they suggested that without allowing for averaging of units that switch to cleaner fuels as a compliance option, natural gas conversion is a less attractive option than if such averaging was allowed, because a facility would not have the ability to offset emissions using that unit. In this case, these stakeholders believe that installing controls that result in fewer emissions reductions than switching to natural gas may be a perverse outcome. They suggested that continuing to allow averaging across subcategories in cases where fuel switching has been used to achieve compliance would instead encourage fuel switching to cleaner fuels, which is environmentally beneficial. The EPA is requesting comment on the potential benefit of this suggested approach, and how such an approach could be justified and incorporated into the rule.

2. Stakeholders requested that EPA consider creating a subcategory for units that are installed and used in place of flares that are currently used to combust process gases. The EPA is requesting comment on how such a subcategory could be justified and incorporated into the rule. The stakeholders also suggested that it would be appropriate to assume that the emissions from process gases diverted from flares to boilers have ''zero emissions'' for the purposes of classifying the boiler they are combusted in. Since the process gases must be combusted in either event, they requested that the EPA develop an approach where we use a concept similar to the emissions averaging provisions, for example, to simply assume that combustion of such process gases in a boiler rather than a flare should not be counted as emissions from the boiler because there is no net increase in emissions. The EPA requests comment on how such an approach could be justified and incorporated into the rule.

VI. Technical Corrections and Clarifications

We are proposing several technical corrections. These amendments are being proposed to correct inaccuracies and oversights that were promulgated in the final rule and to make the rule language consistent with provisions addressed through this reconsideration. These proposed changes are described in Table 3 of this preamble. We request comment on all of these proposed changes.

TABLE 3—MISCELLANEOUS PROPOSED TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART DDDDD

Section of subpart DDDDD	Description of proposed correction
40 CFR 63.7491(m)	Clarify the language in this paragraph to use the word ''unit'' instead of ''boiler.''
40 CFR 63.7495(b)	Revise this paragraph to include a provision in § 63.6(i)
40 CFR 63.7499(f)–(s)	Revise and add new paragraphs to accommodate the addition of new subcategories of boilers and process heaters.
40 CFR 63.7499(d)	Revise the term ''stokers'' to ''stokers/sloped grate/other units'' consistent with how the data for this rule was analyzed.
40 CFR 63.7500(d)	Revise this paragraph by adding a new paragraph (d) to clarify that the emission standards apply at all times, except during startup and shutdown, during which time you must comply only with Table 3.
40 CFR 63.7501(b)	Revise terms in this paragraph to correct spelling errors.
40 CFR 63.7505(c)	Revise this paragraph by removing the reference to Table 12; this table is not included because this is a proposed rule.
40 CFR 63.7510(a)	Revise this paragraph to create four subparagraphs (1)–(4) to clarify our intent on fuel analysis requirements for gaseous fuels.
40 CFR 63.7510(b)	Revise this paragraph to clarify that certain fuels are not subject to the fuel analysis requirements and that units using a continuous emission monitoring system for mercury or hydrogen chloride are exempt from the performance testing and operating limit requirements.
40 CFR 63.7510(c)	Revise this paragraph to clarify that units using a continuous emission monitoring system for carbon monoxide are exempt from the performance testing and operating limit requirements.
40 CFR 63.7510(d)	Revise this paragraph to clarify that owners and operators electing to comply with the alternative total selected metals limit are not required to install a PM CPMS.

TABLE 3—MISCELLANEOUS PROPOSED TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART DDDDD—Continued

Section of subpart DDDDD	Description of proposed correction
40 CFR 63.7510(g) and (h)	Insert a new paragraph (g) and renumber (g) to (h). Paragraph (g) will clarify the compliance provisions for new sources with respect to the work practice and tune-up provisions.
40 CFR 63.7510(f), 63.7515(f), and 63.7520(d)	Revise these paragraphs by removing the references to Table 12; this table is not included because this is a proposed rule.
40 CFR 63.7521(a)	Revise this paragraph to clarify that fuel analysis cannot be used with gaseous fuels to demonstrate compliance with the limits for total selected metals or hydrogen chloride given method limitations. We are also proposing to revise this paragraph to clarify that a fuel gas system consisting of multiple gaseous fuels collected and mixed with each other is considered a single fuel type and sampling and analysis is only required of the combined fuel gas system.
40 CFR 63.7521(b)	Revise this paragraph to clarify that the fuel monitoring plan is needed only if you are required to conduct fuel analyses.
40 CFR 63.7521(b)(1)	Revise this paragraph to add a cross reference to the section describing the initial compliance demonstration.
40 CFR 63.7521(b)(2)(ii) through (iv)	Revise the subparagraphs to clarify that the requirements apply to each anticipated fuel type.
40 CFR 63.7521(c)(1)(ii)	Revise this paragraph by changing wording from ''1-hour'' to ''one-hour''.
	Clarify the different sampling circumstances for performance stack testing and monthly sampling.
40 CFR 63.7521(c)(2)(ii) and 63.7521(d)(2)	Revise this paragraph by clarifying wording describing sampling requirements to provide more flexibility for automated sampling and reduce overly prescriptive language.
40 CFR 63.7521(e)	Reference equations 7, 8, and 9 within this paragraph to add clarity.
40 CFR 63.7521(f)	Add three sub-paragraphs to this paragraph to organize exemptions from fuel specification analyses.
40 CFR 63.7521(g)(1)	Revise this paragraph to add a cross reference to the section describing the initial compliance demonstration.
40 CFR 63.7521(g)(2)(ii) through (iv)	Revise the subparagraphs to clarify that the requirements apply to each anticipated fuel type.
40 CFR 63.7522(b)	Revise this paragraph to add several subparagraphs to clarify that emissions averaging may not include units using CEMS or PM CPMS; that averaging may only be within units in a subcategory subject to the same numerical emission limit; and that emissions averaging is not allowed for certain subcategories of units for certain emission limits.
40 CFR 63.7522(e)(2)	Add the units for emission limits to add clarity (pounds per million Btu).
	Revise the definition of the term ''Sm'' in Equation 2 to clarify that maximum steam generation is in units of pounds per hour.
40 CFR 63.7525(a)	Remove a reference to Table 12; this table is not included because this is a proposed rule.
40 CFR 63.7525(b)(3)	Change language from ''concentrations'' to ''rates'' to provide clarity.
40 CFR 63.7525(b)(5)	Revise this paragraph by changing wording from ''1-hour'' to ''one-hour''.
40 CFR 63.7525(d)(3)	Revise the paragraph to add a reference to 65.7535(d) to replace a description of other situations that constitute a monitoring deviation.
40 CFR 63.7525(d)(4)	Change from the 12-hour block average to 30-day rolling average as specified in the revised Table 8 to subpart DDDDD.
40 CFR 63.7530(b)	Revise this paragraph to clarify which fuels are exempt from analysis by cross-referencing 40 CFR 63.7510(a)(2), instead of repeating the information in that paragraph.
40 CFR 63.7530(b)(4) [formerly (b)(3)]	Revise this paragraph to: 1. Clarify that you are not required to establish and comply with the operating parameter limits when you are using a CEMS to monitor and demonstrate compliance with the applicable emission limit.
	2. Clarify in the subparagraphs which parameters are applicable to specific types of control devices.
	3. Add a new subparagraph to address PM controls used in conjunction with a PM CPMS.
	4. Add a new paragraph to address particulate wet scrubbers as distinct from acid-gas wet scrubbers.
40 CFR 63.7530(c)(2)	Revise the references to Equation 9 to be Equation 10, to accommodate the change in numbering of equations.
40 CFR 63.7530(c)(3)	Revise the references to Equation 9 to be Equation 10, to accommodate the change in numbering of equations.
40 CFR 63.7530(c)(4)	Revise the references to Equation 9 to be Equation 10, to accommodate the change in numbering of equations.
40 CFR 63.7530(h)	Remove a reference to Table 12; this table is not included because this is a proposed rule.
40 CFR 63.7533(b)(2)	Amend this paragraph to clarify that the use of emission credits from implementation of energy conservation measures can only be used by existing units, and that these credits can be used to demonstrate initial and on-going compliance.
40 CFR 63.7533(c), (c)(1)(i), and (c)(3)	Amend these paragraphs to change the date after which energy conservation measures can be used to generate credits from January 14, 2011, to January 1, 2008. January 1, 2008 is the same cut-off date for using a pre-existing energy assessment to satisfy the energy assessment requirement in Table 3 to subpart DDDDD.
40 CFR 63.7533(c)(2)(i) and (c)(3)	Revise the reference to Equation 12 to Equation 14, to accommodate the change in numbering of equations.
40 CFR 63.7533(c)(3)(i)	Revise Equation 12 in this section to clarify the summation to be performed in that equation, and to clarify that the energy credits are expressed as a decimal fraction of the baseline energy input.
40 CFR 63.7533(c)(3)(i) and (f)	Revise the names and definitions of the terms in Equations 12 and 13 to be consistent.
40 CFR 63.7533(c)(f)	Revise the paragraph to remove the reference to (f)(1) and (2) because there is no paragraph (2) and only a single paragraph is needed.

TABLE 3—MISCELLANEOUS PROPOSED TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART DDDDD—Continued

Section of subpart DDDDD	Description of proposed correction
	Change the reference to Equation 13 to Equation 15, to accommodate the change in numbering of equations.
40 CFR 63.7535	Revise the title of this section to add clarity.
40 CFR 63.7535(b)	Add language to the paragraph to clarify that you must operate monitoring systems while the unit is operating and compliance is required. Add ''scheduled CMS maintenance'' to the list of periods during which you are not required to collect data from a monitoring system.
40 CFR 63.7535(c)	Amend this paragraph to clarify that operators must record results of CMS performance audits, dates and duration of periods when the CMS is out of control to completion of the corrective actions necessary to return the CMS to normal operation. Also adding language to clarify that all collected data must be used to assess compliance.
40 CFR 63.7535(d)	Revise the paragraph to remove references to ''out-of-control periods'' and to add ''system accuracy audits'' to the list of periods during which data do not need to be collected.
40 CFR 63.7540(a)	Add references to Tables 1, 2, 3, and 4 to add clarity.
40 CFR 63.7540(a)(2)	Split this paragraph into two subparagraphs for clarity.
40 CFR 63.7540(a)(3)	Revise the paragraph to clarify that fuel analysis for hydrogen chloride is applicable for only solid and liquid fuels, and to clarify that certain fuels are not subject to the fuel analysis requirements.
40 CFR 63.7540(a)(3) and (a)(3)(iii)	Change the references to Equation 9 to Equation 11 to accommodate the change in numbering of equations.
40 CFR 63.7540(a)(4), (a)(5), and (a)(6)	Revise these paragraphs to clarify that certain fuels are not subject to the fuel analysis requirements.
40 CFR 63.7540(a)(5) and (a)(5)(iii)	Change the reference to Equation 11 to Equation 12 to accommodate the change in numbering of equations.
40 CFR 63.7540(a)(9)	Revise this paragraph and the subparagraphs to remove the references to the EPA performance specifications for a PM CEMS, and replace them with a reference to the PM CPMS provisions in the facility's site-specific monitoring plan required by 40 CFR 63.7505.
40 CFR 63.7540(a)(10)(i) and (a)(12)	Revise this paragraph to specify that required burner inspections be done at the next burner shutdown, whether it is scheduled or unscheduled.
40 CFR 63.7541 (a)(3) and (4)	Change the 3-hour parameter averages to 30-day rolling parameter averages to match Table 8 to subpart DDDDD.
40 CFR 63.7545(e)(3)	Remove a reference to Table 12 (this table is not included because this is a proposed rule), and adding language to clarify that this applies to facilities ''not using a CO CEMS to demonstrate compliance.''
40 CFR 63.7545(f)	Revise the paragraph to include units that burn ''gaseous fuel subject to another subpart of this part'' to add clarity.
40 CFR 63.7550(c)(6)	Change the reference to Equation 10 to Equation 11, to accommodate the change in numbering of equations.
40 CFR 63.7550(h), (i), and (j)	Revise paragraph (h) and adding paragraphs (i) and (j) to provide additional instruction on submitting data to EPA from performance emission tests, CEMS performance evaluations, and quarterly data from CEMS and CPMS consistent with the proposed monitoring requirements.
40 CFR 63.7555(d)	Remove a reference to Table 12; this table is not included because this is a proposed rule.
40 CFR 63.7555(d)(2)	Correct an inaccurate reference to 40 CFR 241.3(b)(1)and (2), and to add a sentence to clarify that certain units exempt from the incinerator standards under section 129(g)(1) of the Clean Air Act do not need to maintain the records described in this paragraph.
40 CFR 63.7555(d)(4)	Change the reference to Equation 10 to Equation 11, to accommodate the change in numbering of equations.
40 CFR 63.7555(d)(5)	Change the reference to Equation 11 to Equation 12, to accommodate the change in numbering of equations.
40 CFR 63.7555(h)	Revise the paragraph to include units that burn ''gaseous fuel subject to another subpart of this part'' to add clarity.
40 CFR 63.7575	Revise the definition of process heater to include units heating hot water as a process heat transfer medium.
	Edit the definition of each solid fuel combustor design-based subcategory to establish a hierarchy and assisted affected sources by clarifying applicability for units with multiple combustor types.
	Revise the definition of ''dutch oven'' to clarify that fluidized bed boilers are not part of the dutch oven design category.
	Revise the definition of ''energy assessment'' to clarify the length of days for each category of facilities.
	Revise the definition of ''equivalent'' to remove references to hydrogen sulfide.
	Revise the definition of ''fluidized bed boiler'' to clarify that pulverized coal boilers are not included.
	Revise the definition of ''hybrid suspension grate boiler'' to clarify that ''the fuel combusted in these units exceed a moisture content of 40 percent on an as-fired basis'' and ''Fluidized bed, dutch oven, and pile burner designs are not part of the hybrid suspension grate boiler design category.''
	Revise the definition of ''fuel cell'' to clarify that ''fluidized bed, dutch oven, pile burner, hybrid suspension grate, and suspension burners are not part of the fuel cell subcategory.''
	Revise the definition of ''liquid fuel'' to include vegetable oil.

TABLE 3—MISCELLANEOUS PROPOSED TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART DDDDD—Continued

Section of subpart DDDDD	Description of proposed correction
	Revise the definition of ''process heater'' to include ''units heating hot water as a process heat transfer medium'' and to clarify that ''waste heat process heaters are excluded from this definition'' similar to the exemption allowed for waste heat boilers.
	Revise the definition of ''steam output'' to include a description of the total energy output for a boiler that generates only electricity.
	Revise the definition of ''stoker'' to clarify that ''fluidized bed, dutch oven, pile burner, hybrid suspension grate, suspension burners, and fuel cells are not considered to be a stoker design.''
	Revise the term ''suspension boiler'' to instead be ''suspension burner'', to provide consistent terminology throughout the rule and to clarify that ''fluidized bed, dutch oven, pile burner, and hybrid suspension grate units are not part of the suspension burner subcategory.''
	Revise the definition of ''waste heat boiler'' to clarify that the definition includes fired and unfired waste heat boilers.
	Revise the definition of ''waste heat process heater to clarify that the definition includes fired and unfired waste heat process heaters.
	Add new definitions of ''30-day rolling average'', ''average annual heat input rate'', ''biodiesel'', ''daily block average'', ''heavy liquid'', ''light liquid'', ''other combustor'', ''oxygen analyzer'', ''oxygen trim system'', ''pile burner'', ''residential boiler'', ''sloped grate'', ''stoker/sloped grate/other unit designed to burn kiln dried biomass'', ''stoker/sloped grate/other unit designed to burn wet biomass'', ''total selected metals'', ''unit designed to burn heavy liquid subcategory'', ''unit designed to burn light liquid subcategory'', and ''vegetable oil''.
	Remove the definition of ''liquid fuel subcategory.''
Tables 1 and 2 to subpart DDDDD	Revise the sampling volumes collected and also the prescribed span values associated with the emission measurement methods to account for changes in the numerical emission limits and to be consistent with the proposed emission limits.
Table 3 to subpart DDDDD	Revise items 1, 2, and 3 to account for the proposed changes in the tune-up requirements.
	Revise item 4c to clarify the major systems ''consuming energy from affected boilers and process heaters and which are under the control of the boiler/process heater owner/operator.''
	Revise item 5 to remove the reference to Table 12; this table is not included because this is a proposed rule.
Table 4 to subpart DDDDD	Revise the operating limits for items 1 and 2 to read ''one-hour'' instead of ''1-hour''.
	Revise certain items in the table to clarify the applicability of the parameter operating limits, and to reflect that replace PM CEMS with PM CPMS requirements.
	Revise items 1, 2, and 4 in the table to reflect the fact that we are proposing that compliance with the operating limits is based on a 30-day rolling average.
Table 6 to subpart DDDDD	Revise items 1, 2, and 3 to provide additional instruction on demonstrating compliance.
	Revise item 4 to replace the requirements for hydrogen sulfide in other gas 1 fuels with requirements for total selected metals in solid fuels.
Table 7 to subpart DDDDD	Revise item 1 to include total selected metals with PM and mercury, and to clarify the applicability of the operating limits described in that item.
Table 8 to subpart DDDDD	Include provisions for demonstrating continuous compliance with a PM CPMS, to reflect proposed changes elsewhere in the rule.
	Revise various items to reflect the proposed change from 12-hour block averages to 30-day rolling averages for demonstrating compliance.
	Revise the operating load compliance provisions to be consistent with the operating limit in Table 4 to subpart DDDDD.
Table 11 to subpart DDDDD	Delete Table 11 to subpart DDDDD to be consistent with the proposal to remove the numerical emission limits for dioxin/furan emissions.
Table 12 to subpart DDDDD	Remove Table 12 to subpart DDDDD because this is a proposed rule and Table 12 was needed only because the rule published on March 21, 2011 (76 FR 15608) was a final rule.

VII. Impacts of This Proposed Rule

A. What are the air impacts?

Table 4 of this preamble illustrates, for each basic fuel subcategory, the emissions reductions achieved by the proposed rule (*i.e.,* the difference in emissions between a boiler or process heater controlled to the floor level of control and boilers or process heaters at the current baseline) for new and existing sources. Nationwide emissions of selected HAP (*i.e.,* HCl, HF, Hg, metals, and volatile organic compound (VOC)) will be reduced by 45,000 tons per year for existing units and 19 tons per year for new units. Emissions of HCl will be reduced by 37,000 tons per year for existing units and 0 tons per year for new units. Emissions of Hg will be reduced between 0.5 to 1.8 tons per year for existing units and 20.2 pounds per year for new units. Emissions of filterable PM will be reduced by 41,200 tons per year for existing units and 1,500 tons per year for new units. Emissions of non-mercury metals (*i.e.,* antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel, and selenium) will be reduced by 2,200 tons per year for existing units and 19 tons per year for new units. In addition, emissions of SO_2 are estimated to be reduced by 558,400 tons per year for existing sources and 0 tons per year for new sources. A discussion of the methodology used to estimate emissions and emissions reductions is presented in ''Revised (November 2011) Methodology for Estimating Cost and Emission Impacts for Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP—Major Source'' in the docket.

TABLE 4—SUMMARY OF EMISSIONS REDUCTIONS FOR EXISTING AND NEW SOURCES

[Tons/yr]

Source	Subcategory	HCl	PM	Non mercury metals [a]	Mercury [b]	VOC
Existing Units	Limited Use	1	2	0.45	2.2E–04	1
	Solid units	34,815	34,830	271	0.4 to 1.4	2,487
	Liquid units	2,039	6,240	1,905	0.04 to 0.3	1,815
	Non-Continental Liquid units	158	29	4	0.001 to 0.01	169
	Gas 1 (NG/RG) units	21	118	0.9	0.01	85
	Gas 1 Metallurgical Furnaces	0.4	3	0.02	0.001	23
	Gas 2 (other) units	4	11	0.07	0.004 to 0.005	138
New Units	Solid units	0	1,462	19	0.01	0
	Liquid units	0	0	0	0	0
	Gas 1 units	0	0	0	0	0
	Gas 1 Metallurgical Furnaces	0	0	0	0	0
	Gas 2 (other) units	0	0	0	0	0

[a] Includes antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel, and selenium.

[b] Hg reductions are presented as a range due to adjustments on reported fractions and limits of detection. See memorandum entitled ''Revised (November 2011) Methodology for Estimating Cost and Emissions Impacts for Industrial, Commercial, Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants—Major Source'' for a description of the two methods for estimating Hg reductions.

B. What are the water and solid waste impacts?

The EPA estimated the additional water usage that would result from installing wet scrubbers to meet the emission limits for HCl would be 1.2 billion gallons per year for existing sources and 0 gallons per year for new sources. In addition to the increased water usage, an additional 416 million gallons per year of wastewater would be produced for existing sources and 0 gallons per year for new sources. The annual costs of treating the additional wastewater are $2.3 million for existing sources and $0 for new sources. These costs are accounted for in the control costs estimates.

The EPA estimated the additional solid waste that would result from the MACT floor level of control to be 286,000 tons per year for existing sources and 1,700 tons per year for new sources. Solid waste is generated from flyash and dust captured in PM and Hg controls as well as from spent carbon that is injected into exhaust streams or used to filter gas streams. The costs of handling the additional solid waste generated are $12.0 million for existing sources and $70,600 for new sources. These costs are also accounted for in the control costs estimates.

A discussion of the methodology used to estimate impacts is presented in ''Revised (November 2011) Methodology for Estimating Cost and Emission Impacts for Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP—Major Source'' in the Docket.

C. What are the energy impacts?

The EPA expects an increase of approximately 1.5 billion kilowatt hours (kWh) in national annual energy usage as a result of the proposed rule. Of this amount, 1.4 billion kWh would be from existing sources and 120 million kWh from new sources. The increase results from the electricity required to operate control devices, such as wet scrubbers, electrostatic precipitators, and fabric filters which are expected to be installed to meet the proposed rule. Additionally, the EPA expects work practice standards such as boilers tune-ups and combustion controls will improve the efficiency of boilers, resulting in an estimated fuel savings of 47.3 trillion BTU each year from existing sources. The EPA did not estimate fuel savings and efficiency improvements on new boilers since new boilers are expected to be tuned-up up upon installation and will not achieve additional fuel savings in the first year. This fuel savings estimate includes only those fuel savings resulting from Gas 1, liquid, and coal fuels and it is based on the assumption that the work practice standards will achieve 1 percent improvement in efficiency.

D. What are the cost impacts?

To estimate the national cost impacts of the proposed rule for existing sources, we developed average baseline emission factors for each fuel type/control device combination based on the emission data obtained and contained in the Boiler MACT emission database. If a unit reported emission data, we assigned its unit-specific emission data as its baseline emissions. For units that did not report emission data, we assigned the appropriate emission factors to each existing unit in the inventory database, based on the average emission factors for boilers with similar fuel, design, and control devices. We then compared each unit's baseline emission factors to the proposed MACT floor emission limit to determine if control devices were needed to meet the emission limits. The control analysis considered fabric filters and activated carbon injection to be the primary control devices for Hg control; electrostatic precipitators for units meeting Hg limits but requiring additional control to meet the PM or total selected metals limits; wet scrubbers or fabric filters with dry injection to meet the HCl limits; tune-ups, replacement burners, combustion controls, and oxidation catalysts for CO and organic HAP control; and tune-ups for dioxin/furan control. We identified where one control device could achieve reductions in multiple pollutants, for example a fabric filter was expected to achieve both PM and Hg control, in order to avoid overestimating the costs. We also included costs for testing and monitoring requirements contained in the proposed rule. The resulting total national cost impact of the proposed rule is 5.4 billion dollars in capital expenditures and 1.9 billion dollars per year in total annual costs. Considering estimated fuel savings resulting from work practice standards and combustion controls, the total annualized costs are reduced to 1.5 billion dollars. The total capital and annual costs include costs for control devices, work practices, testing and monitoring. While these

costs are higher than the costs estimated for the final rule, these estimates are based on an inventory that includes 300 additional units that were identified after the final rule was completed. The costs associated with the final rule inventory are just under $5.0 billion in capital expenditures and $1.75 billion in total annual costs ($1.35 billion considering fuel savings). Table 5 of this preamble shows the capital and annual cost impacts for each subcategory. Costs include testing and monitoring costs, but not recordkeeping and reporting costs.

TABLE 5—SUMMARY OF CAPITAL AND ANNUAL COSTS FOR NEW AND EXISTING SOURCES

Source	Subcategory	Estimated/ Projected number of affected units	Capital costs (10^6 $)	Testing and monitoring annualized costs (10^6 $/yr)	Annualized cost(10^6 $/yr) (considering fuel savings)
Existing Units	Coal units	616	2,713	46	953
	Biomass units	508	639	33	169
	Heavy Liquid units	322	769	8.4	264
	Light Liquid units	581	930	5.1	277
	Non-Continental Liquid units	44	181	1.5	42
	Gas 1 (NG/RG) units	11,911	77	0.9	(295)
	Gas 2 (other) units	129	132	2.3	55
Energy Assessment	ALL	1,704 (Facilities)	N/A	N/A	28
New Units	Coal units	0	0	0	0
	Biomass units	82	381	5.6	[a] 99
	Liquid units	0	0	0	0
	Gas 1 (NG/RG) units	1,762	11	0	[a] 5.1
	Gas 2 (other) units	0	0	0	0

[a] Total annualized costs for new units do not account for fuel savings since no fuel savings are estimated in the first year for new units.

Using Department of Energy projections on fuel expenditures, the number of additional boilers that could be potentially constructed was estimated. The resulting total national cost impact of the proposed rule for new boilers in the 3rd year is 393 million dollars in capital expenditures and 104 million dollars per year in total annual costs.

Potential control device cost savings and increased recordkeeping and reporting costs associated with the emissions averaging provisions in the proposed rule are not accounted for in either the capital or annualized cost estimates.

A discussion of the methodology used to estimate cost impacts is presented in ''Revised (November 2011) Methodology for Estimating Cost and Emission Impacts for Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP—Major Source'' in the Docket.

E. What are the economic impacts?

The EPA analyzed the economic impacts of this proposed rule using the methodology that was discussed in the final rule RIA and in the preamble to the final rule. *See* FR 76 15651. The market impact results are very similar to the results presented in the final rule and the RIA. The agency's economic model suggests the average national price increases for industrial sectors are less than 0.01 percent, while average annual domestic production may fall by less than 0.01 percent. Because of higher domestic prices, imports slightly rise. The increase in US trade deficit is now 1.93 billion dollars (2006$). For the RIA, it was 1.86 billion dollars (2006$). The results for sales tests for small businesses were somewhat reduced. For the sales tests using small companies identified in the Combustion Survey, the mean cost to receipts dropped from 4 percent in the RIA to 2 percent for this proposed rule and the median was 0.2 percent for both. The number of parent companies with sales tests exceeding 3 percent dropped from 8 in the RIA to 6 for this proposed rule. There was no change in the results for small public entities. Median cost is still about $1.1 million and representative small major public entities would have cost-to-revenue ratios above 10 percent. The change in employment estimates between the RIA and the proposal is minimal. In the RIA for the final rule, we estimated employment changes ranging between −3100 to +6,500 employees, with a central estimate of +1,700. For this proposal, we estimate employment changes ranging between −3000 to +6,300 employees, with a central estimate of +1,600. These estimated annual employment changes compared to the baseline employment, and are for the time period for which the annualized cost applies (2015 to 2029).

The benefits estimates increased for this proposal. In the RIA for the final rule, we estimated benefits ranging from $22 billion (2008$) to 54 billion (2008$) at a 3 percent discount rate. For this proposal, we estimate benefits ranging from $27 billion (2008$) to 67 billion (2008$) at a 3 percent discount rate. The range for the RIA was $20 billion (2008$) to 49 billion (2008$) at a 7 percent discount rate. The range for this proposal is $25 billion (2008$) to 61 billion (2008$) at a 7 percent discount rate.

F. What are the benefits of this proposed rule?

We calculated health benefits using the methodology described in the RIA prepared for the March 21, 2011, final rule. We incorporated the revised emission reductions estimated for this reconsideration proposal into the analysis. We were unable to estimate the benefits from reducing exposure to HAP and ozone, ecosystem impairment, and visibility impairment, including reducing 187,000 tons of carbon monoxide, 37,000 tons of HCl, 1,000 tons of HF, 1,000 to 3,600 pounds of Hg, and 2,200 tons of other metals. Please refer to the full description in the final Boiler RIA of the unquantified benefits as well as technical details of the analysis and its limitations and uncertainties. These monetized benefits are approximately 23 percent higher than the final rule benefits due to the increase in SO_2 emission reductions associated with the additional units affected by the rule and the revised HCl limit. We estimate the total monetized benefits of this proposed regulatory action to be $27 billion to $67 billion (2008$, 3 percent discount rate) in the implementation year (2015). A summary

of the monetized benefits estimates at discount rates of 3 percent and 7 percent is provided in Table 6 of this preamble. A summary of the avoided health incidences is provided in Table 7 of this preamble.

TABLE 6—SUMMARY OF THE MONETIZED BENEFITS ESTIMATES FOR THE FINAL BOILER MACT

[Millions of 2008$] [1]

Pollutant	Emissions reductions (tons)	Total monetized benefits (at 3% discount rate)	Total monetized benefits (at 7% discount rate)
$PM_{2.5}$-related benefits:			
Direct $PM_{2.5}$	25,601	$1,800 to $4,500	$1,700 to $4,100.
SO_2	558,430	$25,000 to $63,000	$23,000 to $57,000.
Total		$27,000 to $67,000	$25,000 to $61,000.

[1] All estimates are for the implementation year (2015), and are rounded to two significant figures so numbers may not sum across rows. All fine particles are assumed to have equivalent health effects. Benefits from reducing hazardous air pollutants (HAP) are not included. These estimates do not include energy disbenefits valued at $5.8 to $75 million depending on the discount rate. These benefits reflect existing boilers and new boilers anticipated to come online by 2015.

TABLE 7—SUMMARY OF THE AVOIDED HEALTH INCIDENCES FOR THE FINAL BOILER MACT [1]

	Avoided health incidences
Avoided Premature Mortality	3,100–8,000
Avoided Morbidity	.....
Chronic Bronchitis	2,000
Acute Myocardial Infarction	4,900
Hospital Admissions, Respiratory	750
Hospital Admissions, Cardiovascular	1,600
Emergency Room Visits, Respiratory	3,000
Acute Bronchitis	4,600
Work Loss Days	390,000
Asthma Exacerbation	51,000
Minor Restricted Activity Days	2,300,000
Lower Respiratory Symptoms	55,000
Upper Respiratory Symptoms	41,000

[1] All estimates are for the implementation year (2015), and are rounded to two significant figures. All fine particles are assumed to have equivalent health effects. Benefits from reducing HAP are not included. These benefits reflect existing boilers and new boilers anticipated to come online by 2015.

G. What are the secondary air impacts?

For units adding controls to meet the proposed emission limits, we anticipate very minor secondary air impacts. The combustion of fuel needed to generate additional electricity would yield slight increases in emissions, including nitrogen oxide (NO_X), CO and SO_2 and an increase in carbon dioxide (CO_2) emissions. Since NO_X and SO_2 are covered by capped emissions trading programs, these pollutants do not contribute disbenefits from additional electricity demand. Additional CO_2 emissions from increased electricity consumption are estimated to be 931,000 tons per year from existing units and 79,700 tons per year from new units. Energy disbenefits due to increased CO_2 emissions range from $5.8 million to $75 million depending on the discount rate, and thus do not affect the rounded monetized benefits.

VIII. Relationship of This Proposed Action to Section 112(c)(6) of the Clean Air Act

Section 112(c)(6) of the CAA requires the EPA to identify categories of sources of seven specified pollutants to assure that sources accounting for not less than 90 percent of the aggregate emissions of each such pollutant are subject to standards under CAA Section 112(d)(2) or 112(d)(4). The EPA has identified ''Industrial Coal Combustion,'' ''Industrial Oil Combustion,'' Industrial Wood/Wood Residue Combustion,'' ''Commercial Coal Combustion,'' ''Commercial Oil Combustion'' and ''Commercial Wood/Wood Residue Combustion'' as source categories that emit two of the seven CAA Section 112(c)(6) pollutants: polycyclic organic matter (POM) and Hg. (The POM emitted is composed of 16 polyaromatic hydrocarbons and extractable organic matter.) In the **Federal Register** notice *Source Category Listing for Section 112(d)(2) Rulemaking Pursuant to Section 112(c)(6) Requirements,* 63 FR 17838, 17849, Table 2 (1998), the EPA identified ''Industrial Coal Combustion,'' ''Industrial Oil Combustion,'' ''Industrial Wood/Wood Residue Combustion,'' ''Commercial Coal Combustion,'' ''Commercial Oil Combustion'' and ''Commercial Wood/Wood Residue Combustion'' as source categories ''subject to regulation'' for purposes of CAA Section 112(c)(6) with respect to the CAA Section 112(c)(6) pollutants that these units emit.

For Hg, the 112(c)(6) requirement is directly met through the proposed emission limits for Hg. Through these emission limits, the types of boilers and process heaters listed in section 112(c)(6) are subject to regulation.

For POM, which are byproducts of combustion, the formation of POM is effectively reduced by the combustion and post-combustion practices required to comply with the CAA Section 112 standards. The tune-up requirement for all major source units and the CO emission limits will ensure that good combustion practices are followed, thus minimizing emissions of organic HAP, including POM. Any POM that do form

during combustion would be reduced by the various post-combustion controls. The add-on PM control systems (either fabric filter or wet scrubber) and activated carbon injection in the fabric filter-based systems would reduce emissions of these organic pollutants. It is, therefore, reasonable to conclude that POM emissions will be substantially controlled. Thus, while this final rule does not identify specific numerical emission limits for POM, emissions of POM are, for the reasons noted below, nonetheless ''subject to regulation'' for purposes of Section 112(c)(6) of the CAA. In lieu of establishing numerical emissions limits for pollutants such as POM, we regulate surrogate substances. While we have not identified specific numerical limits for POM, CO serves as an effective surrogate for this HAP, because CO, like POM, is formed as a byproduct of combustion, and both would increase with an increase in the level of incomplete combustion. Consequently, we have concluded that the emissions limits for CO function as a surrogate for control of POM, such that it is not necessary to require numerical emissions limits for POM with respect to boilers and process heaters to satisfy CAA Section 112(c)(6).

To further address POM and Hg emissions, this final rule also includes an energy assessment provision that encourage modifications to the facility to reduce energy demand that lead to these emissions.

IX. Statutory and Executive Order Reviews

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

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

Because this action is proposing changes to a final rule and does not increase costs by an amount that would qualify the proposed rule, by itself, as a major rule, the EPA did not prepare a new RIA for this action. Instead, the EPA prepared an assessment of the changes in the costs and benefits of this proposed rule compared to the costs and benefits associated with the March 21, 2011, final rule. Overall, the costs and impacts are estimated to be similar to the costs and impacts associated with the final rule, although the distribution is somewhat different and the number of affected units in the inventory has increased by about 300 units. When comparing the costs using only those sources that were part of the final rule inventory, the costs have decreased. The EPA re-ran the multimarket model to assess changes in economic impacts, and this analysis confirmed that the overall economic impacts are similar to the final rule. The benefits are projected to increase by about 23 percent because of the increase in the estimated SO_2 reductions. A summary of the costs and benefits of the final rule is provided in the preamble to the final rule (*see* 76 FR 15658) and the detailed analysis for the final rule is provided in the RIA for the final rule. In addition, memoranda are provided in the docket to document the changes in costs, economic impacts, and benefits associated with this proposed rule.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned EPA ICR number 2028.07. The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

This proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions aside from a notification of intent to commence burning solid waste materials and notification of alternative fuel use for those units that are in the Gas 1 subcategory but burn liquid fuels for periodic testing, or during periods of gas curtailment or gas supply emergencies. The recordkeeping requirements require only the specific information needed to determine compliance. The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) is estimated to be $96.2 million. This includes 324,954 labor hours per year at a total labor cost of $30.7 million per year, and total non-labor capital costs of $65.5 million per year. This estimate includes initial and annual performance test, conducting an documenting an energy assessment, conducting fuel specifications for Gas 1 units, repeat testing under worst-case conditions for solid fuel units, conducting and documenting a tune-up, semiannual excess emission reports, maintenance inspections, developing a monitoring plan, notifications, and recordkeeping. Monitoring, testing, tune-up and energy assessment costs and cost were also included in the cost estimates presented in the control costs impacts estimates in section VII.D of this preamble. The total burden for the Federal government (averaged over the first 3 years after the effective date of the standard) is estimated to be 97,613 hours per year at a total labor cost of $5.1 million per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2002–0058. Submit any comments related to the ICR to the EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 23, 2011, a comment to OMB

is best assured of having its full effect if OMB receives it by January 23, 2012. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[3] The RFA also allows an agency to ''consider a series of closely related rules as one rule for the purposes of sections'' 603 (initial regulatory flexibility analysis) and 604 (final regulatory flexibility analysis) in order to avoid ''duplicative action.'' 5 U.S.C. 605(c). This proposed rule is closely related to the final major source rule, which the EPA signed on February 21, 2011. The EPA prepared initial regulatory flexibility analyses in connection with the major source rule. Therefore, pursuant to § 605(c), the EPA is not required to complete an initial regulatory flexibility analysis for this rule.

The EPA has been concerned with potential small entity impacts since it began developing the major source rule. The EPA conducted outreach to small entities and, pursuant to § 609 of RFA, convened a Small Business Advocacy Review Panel to obtain advice and recommendations from small entity representatives.

Pursuant to the RFA, the EPA used the Panel's report and prepared both an initial regulatory flexibility analysis and a final regulatory flexibility analysis in connection with the closely related major source rule. Convening an additional Panel and preparing an additional initial regulatory flexibility analysis would be procedurally duplicative and is unnecessary given that the issues here are within the scope of those considered by the Panel. In addition, this reconsideration proposal would decrease capital and annualized costs on small entities by about 3 percent and 10 percent, respectively, relative to the closely related final rule. We invite comments on the aspects of the proposal outlined in section V of this preamble and their impacts on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This March 21, 2011, final rule contained a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, the EPA prepared under section 202 of the UMRA a written statement for the final rule. The discussion below has been updated to reflect the proposed changes.

1. Statutory Authority

As discussed in section I of this preamble, the statutory authority for this proposed rulemaking is section 112 of the CAA. Title III of the CAA Amendments was enacted to reduce nationwide air toxic emissions. Section 112(b) of the CAA lists the 188 chemicals, compounds, or groups of chemicals deemed by Congress to be HAP. These toxic air pollutants are to be regulated by NESHAP.

Section 112(d) of the CAA directs us to develop NESHAP which require existing and new major sources to control emissions of HAP using MACT based standards. This NESHAP applies to all ICI boilers and process heaters located at major sources of HAP emissions.

2. Social Costs and Benefits

The regulatory impact analysis prepared for the final rule, which we have not revised for this proposed rule, including the agency's assessment of costs and benefits, is detailed in the ''Regulatory Impact Analysis for the Final Industrial Boilers and Process Heaters MACT (2011)'' in the docket. Based on estimated compliance costs associated with this proposed rule and the predicted change in prices and production in the affected industries, the estimated social costs of this proposed rule are $1.49 billion (2008 dollars).

It is estimated that 3 years after implementation of this proposed rule, HAP would be reduced by 45,000 tons per year, including reductions in HCl, hydrogen fluoride, metallic HAP including Hg, and several other organic HAP from boilers and process heaters. Studies have determined a relationship between exposure to these HAP and the onset of cancer, however, the agency is unable to provide a monetized estimate of the HAP benefits at this time. In addition, there are significant annual reductions in fine particulate matter ($PM_{2.5}$) and in SO_2 that would occur, including 25,000 thousand tons of $PM_{2.5}$ and 558 thousand tons of SO_2. These reductions occur within 3 years after the implementation of the proposed regulation and are expected to continue throughout the life of the affected sources. The major health effect associated with reducing $PM_{2.5}$ and $PM_{2.5}$ precursors (such as SO_2) is a reduction in premature mortality. Other health effects associated with $PM_{2.5}$ emission reductions include avoiding cases of chronic bronchitis, heart attacks, asthma attacks, and work-lost days (*i.e.,* days when employees are unable to work). While we are unable to monetize the benefits associated with the HAP emissions reductions, we are able to monetize the benefits associated with the $PM_{2.5}$ and SO_2 emissions reductions. For SO_2 and $PM_{2.5}$, we estimated the benefits associated with health effects of PM but were unable to quantify all categories of benefits (particularly those associated with ecosystem and visibility effects). Our estimates of the monetized benefits in 2015 associated with the implementation of the proposed alternative range from $27 billion (2008 dollars) to $67 billion (2008 dollars) when using a 3 percent discount rate (or from $25 billion (2008 dollars) to $61 billion (2008 dollars) when using a 7 percent discount rate). This estimate, at a 3 percent discount rate, is about $25 billion (2008 dollars) to $65 billion (2008 dollars) higher than the estimated social costs shown earlier in this section. The general approach used to value benefits is discussed in more detail earlier in this preamble. For more detailed information on the benefits estimated for the rulemaking, refer to the RIA and the memos updating the impacts and benefits in the docket.

3. Future and Disproportionate Costs

The UMRA requires that we estimate, where accurate estimation is reasonably feasible, future compliance costs imposed by this proposed rule and any

[3] Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards by the North American Industry Classification System category of the owning entity. The range of small business size standards for the affected industries ranges from 500 to 1,000 employees, except for petroleum refining and electric utilities. In these latter two industries, the size standard is 1,500 employees and a mass throughput of 75,000 barrels/day or less, and 4 million kilowatt-hours of production or less, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

disproportionate budgetary effects. Our estimates of the future compliance costs of the rule are discussed previously in this preamble.

We do not believe that there will be any disproportionate budgetary effects of this proposed rule on any particular areas of the country, state or local governments, types of communities (*e.g.,* urban, rural), or particular industry segments. See the results of the ''Regulatory Impact Analysis for the Final Industrial Boilers and Process Heaters MACT (2011).''

4. Effects on the National Economy

The UMRA requires that we estimate the effect of this proposed rule on the national economy. To the extent feasible, we must estimate the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of the U.S. goods and services, if we determine that accurate estimates are reasonably feasible and that such effect is relevant and material.

The nationwide economic impact of this proposed rule is presented in the ''Regulatory Impact Analysis for the Final Industrial Boilers and Process Heaters MACT (2011)'' and two memoranda that are included in the docket, entitled ''Health Benefits for Boiler MACT Reconsideration Proposal'' and ''Regulatory Impact Results for the Reconsideration Proposal for National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters at Major Sources,'' which update the RIA analyses. This analysis provides estimates of the effect of this rule on some of the categories mentioned above. The results of the economic impact analysis are summarized previously in this preamble. The results show that there will be a small impact on prices and output, and little impact on communities that may be affected by this proposed rule. In addition, there should be little impact on energy markets (in this case, coal, natural gas, petroleum products, and electricity). Hence, the potential impacts on the categories mentioned above should be small.

5. Consultation With Government Officials

The UMRA requires that we describe the extent of the agency's prior consultation with affected state, local, and tribal officials, summarize the officials' comments or concerns, and summarize our response to those comments or concerns. In addition, section 203 of the UMRA requires that we develop a plan for informing and advising small governments that may be significantly or uniquely impacted by a proposal. We consulted with State and local air pollution control officials during the development of the final rule. We have also held meetings on this proposed rule with many of the stakeholders from numerous individual companies, institutions, environmental groups, consultants and vendors, labor unions, and other interested parties. We have added materials to the docket to document these meetings.

Consistent with section 205, the EPA has identified and considered a reasonable number of regulatory alternatives. Additional information on the costs and environmental impacts of these regulatory alternatives is presented in the docket. The regulatory alternative upon which the emission limits in this proposed rule are based represents the MACT floors for all subcategories and, as a result, it is the least costly and least burdensome alternative.

This rule is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. While some small governments may have some sources affected by this proposed rule, the impacts are not expected to be significant. Therefore, this proposed rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule will not impose direct compliance costs on state or local governments, and will not preempt state law. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. For the March 21, 2011, final rule, we estimated a 0.05 percent price increase for the energy sector and a -0.02 percent percentage change in production. We estimated a 0.09 percent increase in energy imports. For more information on the estimated energy effects, please refer to the ''Regulatory Impact Analysis for the Final Industrial Boilers and Process Heaters MACT (2011).'' The analysis is available in the public docket. While we did not redo the RIA for this proposed action, the energy impacts for existing sources decreased slightly, and the energy impacts for new source increased due to the increased number of new sources that is now projected. Overall, the projected energy use increased slightly but would not change the analysis that was conducted for the final rule. Therefore, we conclude that the proposed rule when implemented is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (NTTAA), Public Law 104–113,(15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not use available and applicable voluntary consensus standards. The EPA is not proposing the use of any additional EPA test methods, and, therefore, the NTTAA discussion in the March 21, 2011, final rule is still valid. *See* 76 FR 15660–15662.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

For the March 2011 final rule, the EPA determined that rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Compared to the final rule, while the proposed amendments are somewhat less stringent for some subcategories of units and more stringent for some others, the overall increased health benefits demonstrate that the conclusions from the environmental justice analysis conducted for the final rule are still valid.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 2, 2011.

Lisa P. Jackson,

Administrator.

For the reasons cited in the preamble, and under the authority of 42 U.S.C. 7401 *et seq.,* Subpart DDDDD of 40 CFR part 63 is proposed to be revised to read as follows:

PART 63—[AMENDED]

Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters

Sec.

What This Subpart Covers

63.7480 What is the purpose of this subpart?
63.7485 Am I subject to this subpart?
63.7490 What is the affected source of this subpart?
63.7491 Are any boilers or process heaters not subject to this subpart?
63.7495 When do I have to comply with this subpart?

Emission Limitations and Work Practice Standards

63.7499 What are the subcategories of boilers and process heaters?
63.7500 What emission limitations, work practice standards, and operating limits must I meet?
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What This Subpart Covers

§ 63.7480 What is the purpose of this subpart?

This subpart establishes national emission limitations and work practice standards for hazardous air pollutants (HAP) emitted from industrial, commercial, and institutional boilers and process heaters located at major sources of HAP. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards.

§ 63.7485 Am I subject to this subpart?

You are subject to this subpart if you own or operate an industrial, commercial, or institutional boiler or process heater as defined in § 63.7575 that is located at, or is part of, a major source of HAP, except as specified in

§ 63.7491. For purposes of this subpart, a major source of HAP is as defined in § 63.2, except that for oil and natural gas production facilities, a major source of HAP is as defined in § 63.761 (subpart HH of this part, National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities).

§ 63.7490 What is the affected source of this subpart?

(a) This subpart applies to new, reconstructed, and existing affected sources as described in paragraphs (a)(1) and (2) of this section.

(1) The affected source of this subpart is the collection at a major source of all existing industrial, commercial, and institutional boilers and process heaters within a subcategory as defined in § 63.7575.

(2) The affected source of this subpart is each new or reconstructed industrial, commercial, or institutional boiler or process heater, as defined in § 63.7575, located at a major source.

(b) A boiler or process heater is new if you commence construction of the boiler or process heater after June 4, 2010, and you meet the applicability criteria at the time you commence construction.

(c) A boiler or process heater is reconstructed if you meet the reconstruction criteria as defined in § 63.2, you commence reconstruction after June 4, 2010, and you meet the applicability criteria at the time you commence reconstruction.

(d) A boiler or process heater is existing if it is not new or reconstructed.

§ 63.7491 Are any boilers or process heaters not subject to this subpart?

The types of boilers and process heaters listed in paragraphs (a) through (n) of this section are not subject to this subpart.

(a) An electric utility steam generating unit.

(b) A recovery boiler or furnace covered by subpart MM of this part.

(c) A boiler or process heater that is used specifically for research and development. This does not include units that provide heat or steam to a process at a research and development facility.

(d) A hot water heater as defined in this subpart.

(e) A refining kettle covered by subpart X of this part.

(f) An ethylene cracking furnace covered by subpart YY of this part.

(g) Blast furnace stoves as described in EPA–453/R–01–005 (incorporated by reference, see § 63.14).

(h) Any boiler or process heater that is part of the affected source subject to another subpart of this part (*i.e.,* another National Emission Standards for Hazardous Air Pollutants in 40 CFR part 63).

(i) Any boiler or process heater that is used as a control device to comply with another subpart of this part, or part 60 or part 61 of this chapter provided that at least 50 percent of the heat input to the boiler or process heater is provided by the gas stream that is regulated under another subpart.

(j) Temporary boilers as defined in this subpart.

(k) Blast furnace gas fuel-fired boilers and process heaters as defined in this subpart.

(l) Any boiler specifically listed as an affected source in any standard(s) established under section 129 of the Clean Air Act.

(m) A unit that burns hazardous waste covered by Subpart EEE of this part. A unit that is exempt from Subpart EEE as specified in § 63.1200(b) is not covered by Subpart EEE.

(n) Residential boilers as defined in this subpart.

§ 63.7495 When do I have to comply with this subpart?

(a) If you have a new or reconstructed boiler or process heater, you must comply with this subpart by [*DATE 60 DAYS AFTER THE FINAL RULE IS PUBLISHED IN THE* **Federal Register**] or upon startup of your boiler or process heater, whichever is later.

(b) If you have an existing boiler or process heater, you must comply with this subpart no later than [*DATE 3 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**], except as provided in § 63.6(i).

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, paragraphs (c)(1) and (2) of this section apply to you.

(1) Any new or reconstructed boiler or process heater at the existing source must be in compliance with this subpart upon startup.

(2) Any existing boiler or process heater at the existing source must be in compliance with this subpart within 3 years after the source becomes a major source.

(d) You must meet the notification requirements in § 63.7545 according to the schedule in § 63.7545 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limits and work practice standards in this subpart.

(e) If you own or operate an industrial, commercial, or institutional boiler or process heater and would be subject to this subpart except for the exemption in § 63.7491(l) for commercial and industrial solid waste incineration units covered by part 60, subpart CCCC or subpart DDDD, and you cease combusting solid waste, you must be in compliance with this subpart on the effective date of the switch from waste to fuel.

Emission Limitations and Work Practice Standards

§ 63.7499 What are the subcategories of boilers and process heaters?

The subcategories of boilers and process heaters, as defined in § 63.7575 are:

(a) Pulverized coal/solid fossil fuel units.

(b) Stokers designed to burn coal/solid fossil fuel.

(c) Fluidized bed units designed to burn coal/solid fossil fuel.

(d) Stokers/sloped grate/other units designed to burn kiln dried biomass/bio-based solids.

(e) Stokers/sloped grate/other units designed to burn wet biomass/bio-based solids.

(f) Fluidized bed units designed to burn biomass/bio-based solid.

(g) Suspension burners designed to burn biomass/bio-based solid.

(h) Dutch ovens/pile burners designed to burn biomass/bio-based solid.

(i) Fuel cells designed to burn biomass/bio-based solid.

(j) Hybrid suspension/grate burners designed to burn wet biomass/bio-based solid.

(k) Units designed to burn solid fuel.

(l) Units designed to burn liquid fuel.

(m) Units designed to burn heavy liquid fuel.

(n) Units designed to burn light liquid fuel.

(o) Units designed to burn liquid fuel in non-continental states or territories.

(p) Units designed to burn natural gas, refinery gas or other gas 1 fuels.

(q) Units designed to burn gas 2 (other) gases.

(r) Metal process furnaces.

(s) Limited-use boilers and process heaters.

§ 63.7500 What emission limitations, work practice standards, and operating limits must I meet?

(a) You must meet the requirements in paragraphs (a)(1) through (3) of this section, except as provided in paragraphs (b), (c), and (d) of this section. You must meet these requirements at all times, except as provided in paragraph (e) of this section.

(1) You must meet each emission limit and work practice standard in

Tables 1 through 3 to this subpart that applies to your boiler or process heater, for each boiler or process heater at your source, except as provided under § 63.7522. The output-based emission limits (*i.e.,* in units of pounds per million Btu of steam output) in Tables 1 or 2 to this subpart are an alternative applicable only to boilers that generate steam. The output-based emission limits are not applicable to process heaters that do not generate steam.

(2) You must meet each operating limit in Table 4 to this subpart that applies to your boiler or process heater. If you use a control device or combination of control devices not covered in Table 4 to this subpart, or you wish to establish and monitor an alternative operating limit and alternative monitoring parameters, you must apply to the EPA Administrator for approval of alternative monitoring under § 63.8(f).

(3) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(b) As provided in § 63.6(g), EPA may approve use of an alternative to the work practice standards in this section.

(c) Limited-use boilers and process heaters must complete a biennial tune-up as specified in § 63.7540. They are not subject to the emission limits in Tables 1 and 2 to this subpart, the annual tune-up requirement in Table 3 to this subpart, or the operating limits in Table 4 to this subpart. Major sources that have limited-use boilers and process heaters must complete an energy assessment as specified in Table 3 to this subpart if the source has other existing boilers subject to this subpart that are not limited-use boilers.

(d) Boilers and process heaters with a heat input capacity of less than 5 million Btu per hour in the units designed to burn natural gas, refinery gas or other gas 1 fuels subcategory; units designed to burn gas 2 (other) fuels subcategory, or units designed to burn light liquid fuels subcategory must complete a tune-up every 5 years as specified in § 63.7540.

(e) These standards apply at all times, except during periods of startup and shutdown, during which time you must comply only with Table 3 to this subpart.

§ 63.7501 How can I assert an affirmative defense if I exceed an emission limitations during a malfunction?

In response to an action to enforce the emission limitations and operating limits set forth in § 63.7500 you may assert an affirmative defense to a claim for civil penalties for exceeding such standards that are caused by malfunction, as defined at § 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(6) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limitation(s) during a malfunction shall notify the Administrator by telephone or facsimile (fax) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in § 63.7500 to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45-day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

General Compliance Requirements

§ 63.7505 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limits, work practice standards, and operating limits in this subpart. These limits apply to you at all times except for the periods noted in § 63.7500(e).

(b) [Reserved]

(c) You must demonstrate compliance with all applicable emission limits using performance testing, fuel analysis, or continuous monitoring systems (CMS), including a continuous emissions monitoring system (CEMS), continuous opacity monitoring system (COMS), continuous parameter

monitoring system (CPMS), or particulate matter continuous parameter monitoring system (PM CPMS), where applicable. You may demonstrate compliance with the applicable emission limit for hydrogen chloride, mercury, or total selected metals using fuel analysis if the emission rate calculated according to § 63.7530(c) is less than the applicable emission limit. (For gaseous fuels, you may not use fuel analyses to comply with the total selected metals alternative standard or the hydrogen chloride standard.) Otherwise, you must demonstrate compliance for hydrogen chloride, mercury, or total selected metals using performance testing, if subject to an applicable emission limit listed in Table 1 or 2 to this subpart.

(d) If you demonstrate compliance with any applicable emission limit through performance testing and subsequent compliance with operating limits (including the use of CPMS), or with a CEMS, or COMS, you must develop a site-specific monitoring plan according to the requirements in paragraphs (d)(1) through (4) of this section for the use of any CEMS, COMS, or CPMS. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under § 63.8(f).

(1) For each CMS required in this section (including CEMS, COMS, or CPMS), you must develop, and submit to the delegated authority for approval upon request, a site-specific monitoring plan that addresses design, data collection, and the quality assurance and quality control elements outlined in § 63.8(d) and the elements described in paragraphs (d)(1)(i) through (iii) of this section. You must submit this site-specific monitoring plan, if requested, at least 60 days before your initial performance evaluation of your CMS. This requirement to develop and submit a site specific monitoring plan does not apply to affected sources with existing monitoring plans that apply to CEMS and COMS prepared under appendix B to part 60 of this chapter and that meet the requirements of § 63.7525. Using the process described in § 63.8(f)(4), you may request approval of alternative monitoring system quality assurance and quality control procedures in place of those specified in this paragraph and, if approved, include the alternatives in your site-specific monitoring plan.

(i) Installation of the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems; and

(iii) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations, accuracy audits, analytical drift).

(2) In your site-specific monitoring plan, you must also address paragraphs (d)(2)(i) through (iii) of this section.

(i) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1)(ii), (c)(3), and (c)(4)(ii);

(ii) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(iii) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c) (as applicable in Table 10 to this subpart), (e)(1), and (e)(2)(i).

(3) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(4) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

Testing, Fuel Analyses, and Initial Compliance Requirements

§ 63.7510 What are my initial compliance requirements and by what date must I conduct them?

(a) For affected sources that are required to or elect to demonstrate compliance with any of the applicable emission limits in Tables 1 or 2 of this subpart through performance testing, your initial compliance requirements include all the following:

(1) Conduct performance tests according to § 63.7520 and Table 5 to this subpart.

(2) Conduct a fuel analysis for each type of fuel burned in your boiler or process heater according to § 63.7521 and Table 6 to this subpart, except as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) For affected sources that burn a single type of fuel, you are not required to conduct a fuel analysis for each type of fuel burned in your boiler or process heater according to § 63.7521 and Table 6 to this subpart. For purposes of this subpart, units that use a supplemental fuel only for startup, unit shutdown, and transient flame stability purposes still qualify as affected sources that burn a single type of fuel, and the supplemental fuel is not subject to the fuel analysis requirements under § 63.7521 and Table 6 to this subpart.

(ii) When natural gas, refinery gas, other gas 1 fuels are co-fired with other fuels, you are not required to conduct a fuel analysis of those fuels according to § 63.7521 and Table 6 to this subpart. If gaseous fuels other than natural gas, refinery gas, or other gas 1 fuels are co-fired with other fuels and those gaseous fuels are subject to another subpart of this part, you are not required to conduct a fuel analysis of those fuels according to § 63.7521 and Table 6 to this subpart.

(iii) You are not required to conduct a chlorine fuel analysis for any gaseous fuels. You must still conduct a fuel analysis for mercury on gaseous fuels unless the fuel is exempted in paragraphs (a)(2)(i) through (iii) of this section.

(3) Establish operating limits according to § 63.7530 and Table 7 to this subpart.

(4) Conduct CMS performance evaluations according to § 63.7525.

(b) For affected sources that elect to demonstrate compliance with the applicable emission limits in Tables 1 or 2 of this subpart for hydrogen chloride, mercury or total selected metals through fuel analysis, your initial compliance requirement is to conduct a fuel analysis for each type of fuel burned in your boiler or process heater according to § 63.7521 and Table 6 to this subpart and establish operating limits according to § 63.7530 and Table 8 to this subpart. The fuels described in paragraph (a)(2)(i) through (iii) of this section are exempt from these fuel analysis and operating limit requirements. Boilers and process heaters that use a CEMS for mercury or hydrogen chloride are exempt from the performance testing and operating limit requirements specified in paragraph (a) of this section.

(c) If your boiler or process heater is subject to a carbon monoxide limit, your initial compliance demonstration for carbon monoxide is to conduct a performance test for carbon monoxide according to Table 5 to this subpart, or conduct a performance evaluation of your continuous carbon monoxide monitor, if applicable, according to § 63.7525(a). Boilers and process heaters that use a continuous emission monitoring system for carbon monoxide are exempt from the initial carbon monoxide performance testing and oxygen concentration operating limit requirements specified in paragraph (a) of this section.

(d) If your boiler or process heater subject to a PM limit has an average annual heat input rate greater than 250 MMBtu per hour from solid fossil fuel and/or residual oil, your initial

compliance demonstration for PM is to conduct a performance test in accordance with § 63.7520 and Table 5 to this subpart. Owners of boilers and process heaters who elect to comply with the alternative total selected metals limit are not required to install a CPMS.

(e) For existing affected sources, you must complete the initial compliance demonstration, as specified in paragraphs (a) through (d) of this section, no later than 180 days after the compliance date that is specified for your source in § 63.7495 and according to the applicable provisions in § 63.7(a)(2) as cited in Table 10 to this subpart. You must complete an initial tune-up by following the procedures described in § 63.7540(a)(10)(i) through (vi) and complete the one-time energy assessment specified in Table 3 to this subpart, both no later than the compliance date specified in § 63.7495.

(f) For new or reconstructed affected sources, you must complete the initial compliance demonstration with the emission limits no later than [*DATE 240 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**] or within 180 days after startup of the source, whichever is later.

(g) For new or reconstructed affected sources, you must demonstrate initial compliance with the applicable work practice standards in Table 3 to this subpart no later than the compliance date that is specified in § 63.7595 and according to the applicable provisions in § 63.7(a)(2). You must conduct the initial tune-up within 365 days after startup of the source. Thereafter, you are required to complete the applicable annual, biennial, or 5-year tune-up as specified in § 63.7540(a).

(h) For affected sources that ceased burning solid waste consistent with § 63.7495(e) and for which your initial compliance date has passed, you must demonstrate compliance within 60 days of the effective date of the waste-to-fuel switch. If you have not conducted your compliance demonstration for this subpart within the previous 12 months, you must complete all compliance demonstrations for this subpart before you commence or recommence combustion of solid waste.

§ 63.7515 When must I conduct subsequent performance tests, fuel analyses, or tune-ups?

(a) You must conduct all applicable performance tests according to § 63.7520 on an annual basis, except as specified in paragraphs (b) through (e) of this section. Annual performance tests must be completed no more than 13 months after the previous performance test, except as specified in paragraphs (b) through (e) of this section.

(b) You can conduct performance tests less often for a given pollutant if your performance tests for the pollutant for at least 2 consecutive years show that your emissions are at or below 75 percent of the emission limit (or, in limited instances as specified in Tables 1 and 2 to this subpart, at or below the emission limit) and if there are no changes in the operation of the affected source or air pollution control equipment that could increase emissions. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no more than 37 months after the previous performance test. If you elect to demonstrate compliance using emission averaging under § 63.7522, you must continue to conduct performance tests annually.

(c) If your boiler or process heater continues to meet the emission limit for the pollutant, you may choose to conduct performance tests for the pollutant every third year if your emissions are at or below 75 percent of the emission limit (or, in limited instances as specified in Tables 1 and 2 to this subpart, at or below the emission limit) and if there are no changes in the operation of the affected source or air pollution control equipment that could increase emissions, but each such performance test must be conducted no more than 37 months after the previous performance test. If you elect to demonstrate compliance using emission averaging under § 63.7522, you must continue to conduct performance tests annually. The requirement to test at maximum chloride input level is waived unless the stack test is conducted for hydrogen chloride. The requirement to test at maximum mercury input level is waived unless the stack test is conducted for mercury. The requirement to test at maximum total selected metals input level is waived unless the stack test is conducted for total selected metals.

(d) If a performance test shows emissions exceeded the emission limit or 75 percent of the emission limit (as specified in Tables 1 and 2) for a pollutant, you must conduct annual performance tests for that pollutant until all performance tests over a consecutive 2-year period meet the required level (either 75 percent of the emission or the emission limit, as specified in Tables 1 and 2).

(e) If you are required to meet an applicable tune-up work practice standard, you must conduct an annual, biennial, or 5-year performance tune-up according to § 63.7540(a)(10), (11), or (12), respectively. Each annual tune-up specified in § 63.7540(a)(10) must be no more than 13 months after the previous tune-up. Each biennial tune-up specified in § 63.7540(a)(11) must be conducted no more than 25 months after the previous tune-up. Each 5-year tune-up specified in § 63.7540(a)(12) must be conducted no more than 61 months after the previous tune-up. For a new or reconstructed affected source, the first annual, biennial, or 5-year tune-up must be no later than 13 months, 25 months, or 61 months, respectively, after the initial startup of the new or reconstructed affected source.

(f) If you demonstrate compliance with the mercury, hydrogen chloride, or total selected metals based on fuel analysis, you must conduct a monthly fuel analysis according to § 63.7521 for each type of fuel burned that is subject to an emission limit in Table 1 or 2 to this subpart. If you burn a new type of fuel, you must conduct a fuel analysis before burning the new type of fuel in your boiler or process heater. You must still meet all applicable continuous compliance requirements in § 63.7540. If 12 consecutive monthly fuel analyses demonstrate compliance, you may request decreased fuel analysis frequency by applying to the EPA Administrator for approval of alternative monitoring under § 63.8(f).

(g) You must report the results of performance tests and the associated initial fuel analyses within 90 days after the completion of the performance tests. This report must also verify that the operating limits for your affected source have not changed or provide documentation of revised operating limits established according to § 63.7530 and Table 7 to this subpart, as applicable. The reports for all subsequent performance tests must include all applicable information required in § 63.7550.

§ 63.7520 What stack tests and procedures must I use?

(a) You must conduct all performance tests according to § 63.7(c), (d), (f), and (h). You must also develop a site-specific stack test plan according to the requirements in § 63.7(c). You shall conduct all performance tests under such conditions as the Administrator specifies to you based on representative performance of the affected source for the period being tested. Upon request, you shall make available to the Administrator such records as may be necessary to determine the conditions of the performance tests.

(b) You must conduct each performance test according to the requirements in Table 5 to this subpart.

(c) You must conduct each performance test under the specific conditions listed in Tables 5 and 7 to this subpart. You must conduct performance tests at representative operating load conditions while burning the type of fuel or mixture of fuels that has the highest content of chlorine and mercury, and total selected metals if you are opting to comply with the total selected metals alternative standard, and you must demonstrate initial compliance and establish your operating limits based on these performance tests. These requirements could result in the need to conduct more than one performance test. Following each performance test and until the next performance test, you must comply with the operating limit for operating load conditions specified in Table 4 to this subpart.

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must comply with the minimum applicable sampling times or volumes specified in Tables 1 and 2 to this subpart.

(e) To determine compliance with the emission limits, you must use the F–Factor methodology and equations in sections 12.2 and 12.3 of EPA Method 19 at 40 CFR part 60, appendix A–7 of this chapter to convert the measured particulate matter concentrations, the measured hydrogen chloride concentrations, the measured mercury concentrations, and the measured total selected metals concentrations that result from the initial performance test to pounds per million Btu heat input emission rates using F-factors.

§ 63.7521 What fuel analyses, fuel specification, and procedures must I use?

(a) For solid and liquid fuels, you must conduct fuel analyses for chloride and mercury according to the procedures in paragraphs (b) through (e) of this section and Table 6 to this subpart, as applicable. For solid fuels, you must also conduct fuel analyses for total selected metals if you are opting to comply with the total selected metals alternative standard. For gas 2 (other) fuels, you must conduct fuel analysis for mercury according to the procedures in paragraphs (b) through (e) of this section and Table 6 to this subpart, as applicable. (For gaseous fuels, you may not use fuel analyses to comply with the total selected metals alternative standard or the hydrogen chloride standard.) For purposes of complying with this section, a fuel gas system that consists of multiple gaseous fuels collected and mixed with each other is considered a single fuel type and sampling and analysis is only required on the combined fuel gas system that will feed the boiler or process heater. Sampling and analysis of the individual gaseous streams prior to combining is not required. You are not required to conduct fuel analyses for fuels used for only startup, unit shutdown, and transient flame stability purposes. You are required to conduct fuel analyses only for fuels and units that are subject to emission limits for mercury, hydrogen chloride, or total selected metals in Tables 1 and 2 to this subpart. Gaseous and liquid fuels are exempt from the sampling requirements in paragraphs (c) and (d) of this section and Table 6 of this subpart.

(b) You must develop and submit a site-specific fuel monitoring plan to the EPA Administrator for review and approval according to the following procedures and requirements in paragraphs (b)(1) and (2) of this section, if you are required to conduct fuel analyses as specified in § 63.7510.

(1) You must submit the fuel analysis plan no later than 60 days before the date that you intend to conduct the initial compliance demonstration described in § 63.7510.

(2) You must include the information contained in paragraphs (b)(2)(i) through (vi) of this section in your fuel analysis plan.

(i) The identification of all fuel types anticipated to be burned in each boiler or process heater.

(ii) For each anticipated fuel type, the notification of whether you or a fuel supplier will be conducting the fuel analysis.

(iii) For each anticipated fuel type, a detailed description of the sample location and specific procedures to be used for collecting and preparing the composite samples if your procedures are different from paragraph (c) or (d) of this section. Samples should be collected at a location that most accurately represents the fuel type, where possible, at a point prior to mixing with other dissimilar fuel types.

(iv) For each anticipated fuel type, the analytical methods from Table 6, with the expected minimum detection levels, to be used for the measurement of chlorine or mercury.

(v) If you request to use an alternative analytical method other than those required by Table 6 to this subpart, you must also include a detailed description of the methods and procedures that you are proposing to use. Methods in Table 6 shall be used until the requested alternative is approved.

(vi) If you will be using fuel analysis from a fuel supplier in lieu of site-specific sampling and analysis, the fuel supplier must use the analytical methods required by Table 6 to this subpart.

(c) At a minimum, you must obtain three composite fuel samples for each fuel type according to the procedures in paragraph (c)(1) or (2) of this section, or use an automated sampling mechanism that provides representative composite fuel samples for each fuel type that includes both coarse and fine material.

(1) If sampling from a belt (or screw) feeder, collect fuel samples according to paragraphs (c)(1)(i) and (ii) of this section.

(i) Stop the belt and withdraw a 6-inch wide sample from the full cross-section of the stopped belt to obtain a minimum two pounds of sample. You must collect all the material (fines and coarse) in the full cross-section. You must transfer the sample to a clean plastic bag.

(ii) Each composite sample will consist of a minimum of three samples collected at approximately equal one-hour intervals during the testing period for sampling during performance stack testing. For monthly sampling, each composite sample shall be collected at approximately equal 10-day intervals during the month.

(2) If sampling from a fuel pile or truck, you must collect fuel samples according to paragraphs (c)(2)(i) through (iii) of this section.

(i) For each composite sample, you must select a minimum of five sampling locations uniformly spaced over the surface of the pile.

(ii) At each sampling site, you must dig into the pile to a uniform depth of approximately 18 inches. You must insert a clean shovel into the hole and withdraw a sample, making sure that large pieces do not fall off during sampling; use the same shovel to collect all samples.

(iii) You must transfer all samples to a clean plastic bag for further processing.

(d) You must prepare each composite sample according to the procedures in paragraphs (d)(1) through (7) of this section.

(1) You must thoroughly mix and pour the entire composite sample over a clean plastic sheet.

(2) You must break large sample pieces (*e.g.,* larger than 3 inches) into smaller sizes.

(3) You must make a pie shape with the entire composite sample and subdivide it into four equal parts.

(4) You must separate one of the quarter samples as the first subset.

(5) If this subset is too large for grinding, you must repeat the procedure in paragraph (d)(3) of this section with the quarter sample and obtain a one-quarter subset from this sample.

(6) You must grind the sample in a mill.

(7) You must use the procedure in paragraph (d)(3) of this section to obtain a one-quarter subsample for analysis. If the quarter sample is too large, subdivide it further using the same procedure.

(e) You must determine the concentration of pollutants in the fuel (mercury and/or chlorine and/or total selected metals) in units of pounds per million Btu of each composite sample for each fuel type according to the procedures in Table 6 to this subpart, for use in Equations 7, 8, and 9 of this subpart.

(f) To demonstrate that a gaseous fuel other than natural gas or refinery gas qualifies as an other gas 1 fuel, as defined in § 63.7575, you must conduct a fuel specification analyses for mercury according to the procedures in paragraphs (g) through (i) of this section and Table 6 to this subpart, as applicable, except as specified in paragraph (f)(1) through (3) of this section.

(1) You are not required to conduct the fuel specification analyses in paragraphs (g) through (i) of this section for natural gas or refinery gas.

(2) You are not required to conduct the fuel specification analyses in paragraphs (g) through (i) of this section for gaseous fuels that are subject to another subpart of this part.

(3) You are not required to conduct the fuel specification analyses in paragraphs (g) through (i) of this section on gaseous fuels for units that are complying with the limits for units designed to burn gas 2 (other) fuels.

(g) You must develop and submit a site-specific fuel analysis plan for other gas 1 fuels to the EPA Administrator for review and approval according to the following procedures and requirements in paragraphs (g)(1) and (2) of this section.

(1) You must submit the fuel analysis plan no later than 60 days before the date that you intend to conduct the initial compliance demonstration described in § 63.7510.

(2) You must include the information contained in paragraphs (g)(2)(i) through (vi) of this section in your fuel analysis plan.

(i) The identification of all gaseous fuel types other than those exempted from fuel specification analysis under (f)(1) through (3) of this section anticipated to be burned in each boiler or process heater.

(ii) For each anticipated fuel type, the notification of whether you or a fuel supplier will be conducting the fuel specification analysis.

(iii) For each anticipated fuel type, a detailed description of the sample location and specific procedures to be used for collecting and preparing the samples if your procedures are different from the sampling methods contained in Table 6 to this subpart. Samples should be collected at a location that most accurately represents the fuel type, where possible, at a point prior to mixing with other dissimilar fuel types. If multiple boilers or process heaters are fueled by a common fuel stream it is permissible to conduct a single gas specification at the common point of gas distribution.

(iv) For each anticipated fuel type, the analytical methods from Table 6 to this subpart, with the expected minimum detection levels, to be used for the measurement of mercury.

(v) If you request to use an alternative analytical method other than those required by Table 6 to this subpart, you must also include a detailed description of the methods and procedures that you are proposing to use. Methods in Table 6 to this subpart shall be used until the requested alternative is approved.

(vi) If you will be using fuel analysis from a fuel supplier in lieu of site-specific sampling and analysis, the fuel supplier must use the analytical methods required by Table 6 to this subpart.

(h) You must obtain a single fuel sample for each fuel type according to the sampling procedures listed in Table 6 for fuel specification of gaseous fuels.

(i) You must determine the concentration in the fuel of mercury, in units of microgram per cubic meter, dry basis, of each sample for each gas 1 fuel type according to the procedures in Table 6 to this subpart.

§ 63.7522 Can I use emissions averaging to comply with this subpart?

(a) As an alternative to meeting the requirements of § 63.7500 for particulate matter, hydrogen chloride, or mercury on a boiler or process heater-specific basis, if you have more than one existing boiler or process heater in any subcategory located at your facility, you may demonstrate compliance by emissions averaging, if your averaged emissions are not more than 90 percent of the applicable emission limit, according to the procedures in this section. You may not include new boilers or process heaters in an emissions average.

(b) For a group of two or more existing boilers or process heaters in the same subcategory that each vent to a separate stack, you may average particulate matter, hydrogen chloride, or mercury emissions among existing units to demonstrate compliance with the limits in Table 2 to this subpart as specified in paragraph (b)(1) through (3) of this section, if you satisfy the requirements in paragraphs (c) through (g) of this section.

(1) You may not include in an average units using a CEMS or PM CPMS for demonstrating compliance, even if the use of a CEMS or PM CPMS is optional.

(2) For Hg and HCl, averaging is allowed as follows:

(i) You may average among units in any of the solid fuel subcategories.

(ii) You may average among units in any of the liquid fuel subcategories.

(iii) You may average among units in a subcategory of units designed to burn gas 2 (other) fuels.

(iv) You may not average across the liquid, solid fuel, and gas 2 (other) subcategories.

(3) For particulate matter, averaging is only allowed between units within each of the following combustor level subcategories and you may not average across subcategories:

(i) Pulverized coal/solid fossil fuel units.

(ii) Stokers designed to burn coal/solid fossil fuel.

(iii) Fluidized bed units designed to burn coal/solid fossil fuel.

(iv) Stokers/sloped grate/other units designed to burn kiln dried biomass/bio-based solids.

(v) Stokers/sloped grate/other units designed to burn wet biomass/bio-based solids.

(vi) Fluidized bed units designed to burn biomass/bio-based solid.

(vii) Suspension burners designed to burn biomass/bio-based solid.

(viii) Dutch ovens/pile burners designed to burn biomass/bio-based solid.

(ix) Fuel Cells designed to burn biomass/bio-based solid.

(x) Hybrid suspension/grate burners designed to burn wet biomass/bio-based solid.

(xi) Units designed to burn heavy liquid fuel.

(xii) Units designed to burn light liquid fuel.

(xiii) Units designed to burn liquid fuel in non-continental states or territories.

(xiv) Units designed to burn gas 2 (other) gases.

(c) For each existing boiler or process heater in the averaging group, the emission rate achieved during the initial

compliance test for the HAP being averaged must not exceed the emission level that was being achieved on [*DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**] or the control technology employed during the initial compliance test must not be less effective for the HAP being averaged than the control technology employed on [*DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**].

(d) The averaged emissions rate from the existing boilers and process heaters participating in the emissions averaging option must be in compliance with the limits in Table 2 to this subpart at all times following the compliance date specified in § 63.7495.

(e) You must demonstrate initial compliance according to paragraph (e)(1) or (2) of this section using the maximum rated heat input capacity or maximum steam generation capacity of each unit and the results of the initial performance tests or fuel analysis.

(1) You must use Equation 1a or 1b of this section to demonstrate that the particulate matter, hydrogen chloride, or mercury emissions from all existing units participating in the emissions averaging option for that pollutant do not exceed the emission limits in Table 2 to this subpart. Use Equation 1a if you are complying with the emission limits on a heat input basis and use Equation 1b if you are complying with the emission limits on a steam generation (output) basis.

$$AveWeightedEmissions = 1.1 \times \sum_{i=1}^{n} (Er \times Hm) \div \sum_{i=1}^{n} Hm \qquad \text{(Eq. 1a)}$$

Where:

AveWeightedEmissions = Average weighted emissions for particulate matter, hydrogen chloride, or mercury, in units of pounds per million Btu of heat input.

Er = Emission rate (as determined during the initial compliance demonstration) of particulate matter, hydrogen chloride, or mercury from unit, i, in units of pounds per million Btu of heat input. Determine the emission rate for particulate matter, hydrogen chloride, or mercury by performance testing according to Table 5 to this subpart, or by fuel analysis for hydrogen chloride or mercury using the applicable equation in § 63.7530(c).

Hm = Maximum rated heat input capacity of unit, i, in units of million Btu per hour.

n = Number of units participating in the emissions averaging option.

1.1 = Required discount factor.

$$AveWeightedEmissions = 1.1 \times \sum_{i=1}^{n} (Er \times So) \div \sum_{i=1}^{n} So \qquad \text{(Eq. 1b)}$$

Where:

AveWeightedEmissions = Average weighted emissions for particulate matter, hydrogen chloride, or mercury, in units of pounds per million Btu of steam output.

Er = Emission rate (as determined during the initial compliance demonstration) of particulate matter, hydrogen chloride, or mercury from unit, i, in units of pounds per million Btu of steam output. Determine the emission rate for particulate matter, hydrogen chloride, or mercury by performance testing according to Table 5 to this subpart, or by fuel analysis for hydrogen chloride or mercury using the applicable equation in § 63.7530(c). If you are taking credit for energy conservation measures from a unit according to § 63.7533, use the adjusted emission level for that unit, E_{adj}, determined according to § 63.7533 for that unit.

So = Maximum steam output capacity of unit, i, in units of million Btu per hour, as defined in § 63.7575.

n = Number of units participating in the emissions averaging option.

1.1 = Required discount factor.

(2) If you are not capable of determining the maximum rated heat input capacity of one or more boilers that generate steam, you may use Equation 2 of this section as an alternative to using Equation 1a of this section to demonstrate that the particulate matter, hydrogen chloride, or mercury emissions from all existing units participating in the emissions averaging option do not exceed the emission limits for that pollutant in Table 2 to this subpart that are in pounds per million Btu of heat input.

$$AveWeightedEmissions = 1.1 \times \sum_{i=1}^{n} (Er \times Sm \times Cfi) \div \sum_{i=1}^{n} (Sm \times Cfi) \qquad \text{(Eq. 2)}$$

Where:

AveWeightedEmissions = Average weighted emission level for PM, hydrogen chloride, or mercury, in units of pounds per million Btu of heat input.

Er = Emission rate (as determined during the most recent compliance demonstration) of particulate matter, hydrogen chloride, or mercury from unit, i, in units of pounds per million Btu of heat input. Determine the emission rate for particulate matter, hydrogen chloride, or mercury by performance testing according to Table 5 to this subpart, or by fuel analysis for hydrogen chloride or mercury using the applicable equation in § 63.7530(c).

Sm = Maximum steam generation capacity by unit, i, in units of pounds per hour.

Cfi = Conversion factor, calculated from the most recent compliance test, in units of million Btu of heat input per pounds of steam generated for unit, i.

1.1 = Required discount factor.

(f) After the initial compliance demonstration described in paragraph (e) of this section, you must demonstrate compliance on a monthly basis determined at the end of every month (12 times per year) according to paragraphs (f)(1) through (3) of this section. The first monthly period begins on the compliance date specified in § 63.7495.

(1) For each calendar month, you must use Equation 3a or 3b of this section to calculate the average weighted emission rate for that month. Use Equation 3a and the actual heat input for the month for each existing unit participating in the emissions averaging option if you are complying with emission limits on a heat input basis. Use Equation 3b and the actual steam generation for the month if you

are complying with the emission limits on a steam generation (output) basis.

$$AveWeightedEmissions = 1.1 \times \sum_{i=1}^{n} (Er \times Hb) \div \sum_{i=1}^{n} Hb \qquad \text{(Eq. 3a)}$$

Where:

AveWeightedEmissions = Average weighted emission level for particulate matter, hydrogen chloride, or mercury, in units of pounds per million Btu of heat input, for that calendar month.

Er = Emission rate (as determined during the most recent compliance demonstration) of particulate matter, hydrogen chloride, or mercury from unit, i, in units of pounds per million Btu of heat input. Determine the emission rate for particulate matter, hydrogen chloride, or mercury by performance testing according to Table 5 to this subpart, or by fuel analysis for hydrogen chloride or mercury using the applicable equation in § 63.7530(c).

Hb = The heat input for that calendar month to unit, i, in units of million Btu.

n = Number of units participating in the emissions averaging option.

1.1 = Required discount factor.

$$AveWeightedEmissions = 1.1 \times \sum_{i=1}^{n} (Er \times So) \div \sum_{i=1}^{n} So \qquad \text{(Eq. 3b)}$$

Where:

AveWeightedEmissions = Average weighted emission level for particulate matter, hydrogen chloride, or mercury, in units of pounds per million Btu of steam output, for that calendar month.

Er = Emission rate (as determined during the most recent compliance demonstration) of particulate matter, hydrogen chloride, or mercury from unit, i, in units of pounds per million Btu of steam output. Determine the emission rate for particulate matter, hydrogen chloride, or mercury by performance testing according to Table 5 to this subpart, or by fuel analysis for hydrogen chloride or mercury using the applicable equation in § 63.7530(c). If you are taking credit for energy conservation measures from a unit according to § 63.7533, use the adjusted emission level for that unit, E_{adj}, determined according to § 63.7533 for that unit.

So = The steam output for that calendar month from unit, i, in units of million Btu, as defined in § 63.7575.

n = Number of units participating in the emissions averaging option.

1.1 = Required discount factor.

(2) If you are not capable of monitoring heat input, you may use Equation 4 of this section as an alternative to using Equation 3a of this section to calculate the average weighted emission rate using the actual steam generation from the boilers participating in the emissions averaging option.

$$AveWeightedEmissions = 1.1 \times \sum_{i=1}^{n} (Er \times Sa \times Cfi) \div \sum_{i=1}^{n} (Sa \times Cfi) \qquad \text{(Eq. 4)}$$

Where:

AveWeightedEmissions = average weighted emission level for PM, hydrogen chloride, or mercury, in units of pounds per million Btu of heat input for that calendar month.

Er = Emission rate (as determined during the most recent compliance demonstration of particulate matter, hydrogen chloride, or mercury from unit, i, in units of pounds per million Btu of heat input. Determine the emission rate for particulate matter, hydrogen chloride, or mercury by performance testing according to Table 5 to this subpart, or by fuel analysis for hydrogen chloride or mercury using the applicable equation in § 63.7530(c).

Sa = Actual steam generation for that calendar month by boiler, i, in units of pounds.

Cfi = Conversion factor, as calculated during the most recent compliance test, in units of million Btu of heat input per pounds of steam generated for boiler, i.

1.1 = Required discount factor.

(3) Until 12 monthly weighted average emission rates have been accumulated, calculate and report only the average weighted emission rate determined under paragraph (f)(1) or (2) of this section for each calendar month. After 12 monthly weighted average emission rates have been accumulated, for each subsequent calendar month, use Equation 5 of this section to calculate the 12-month rolling average of the monthly weighted average emission rates for the current calendar month and the previous 11 calendar months.

$$Eavg = \sum_{i=1}^{n} ERi \div 12 \qquad \text{(Eq. 5)}$$

Where:

Eavg = 12-month rolling average emission rate, (pounds per million Btu heat input)

ERi = Monthly weighted average, for calendar month ''i'' (pounds per million Btu heat input), as calculated by paragraph (f)(1) or (2) of this section.

(g) You must develop, and submit to the applicable delegated authority for review and approval, an implementation plan for emission averaging according to the following procedures and requirements in paragraphs (g)(1) through (4) of this section.

(1) You must submit the implementation plan no later than 180 days before the date that the facility intends to demonstrate compliance using the emission averaging option.

(2) You must include the information contained in paragraphs (g)(2)(i) through (vii) of this section in your implementation plan for all emission sources included in an emissions average:

(i) The identification of all existing boilers and process heaters in the averaging group, including for each either the applicable HAP emission level or the control technology installed as of *[DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**] and the date on which you are requesting emission averaging to commence;

(ii) The process parameter (heat input or steam generated) that will be monitored for each averaging group;

(iii) The specific control technology or pollution prevention measure to be used for each emission boiler or process heater in the averaging group and the date of its installation or application. If the pollution prevention measure reduces or eliminates emissions from multiple boilers or process heaters, the owner or operator must identify each boiler or process heater;

(iv) The test plan for the measurement of particulate matter, hydrogen chloride, or mercury emissions in accordance with the requirements in § 63.7520;

(v) The operating parameters to be monitored for each control system or device consistent with § 63.7500 and Table 4, and a description of how the operating limits will be determined;

(vi) If you request to monitor an alternative operating parameter pursuant to § 63.7525, you must also include:

(A) A description of the parameter(s) to be monitored and an explanation of the criteria used to select the parameter(s); and

(B) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device; the frequency and content of monitoring, reporting, and recordkeeping requirements; and a demonstration, to the satisfaction of the applicable delegated authority, that the proposed monitoring frequency is sufficient to represent control device operating conditions; and

(vii) A demonstration that compliance with each of the applicable emission limit(s) will be achieved under representative operating load conditions. Following each compliance demonstration and until the next compliance demonstration, you must comply with the operating limit for operating load conditions specified in Table 4 to this subpart.

(3) The delegated authority shall review and approve or disapprove the plan according to the following criteria:

(i) Whether the content of the plan includes all of the information specified in paragraph (g)(2) of this section; and

(ii) Whether the plan presents sufficient information to determine that compliance will be achieved and maintained.

(4) The applicable delegated authority shall not approve an emission averaging implementation plan containing any of the following provisions:

(i) Any averaging between emissions of differing pollutants or between differing sources; or

(ii) The inclusion of any emission source other than an existing unit in the same subcategory.

(h) For a group of two or more existing affected units, each of which vents through a single common stack, you may average particulate matter, hydrogen chloride, or mercury emissions to demonstrate compliance with the limits for that pollutant in Table 2 to this subpart if you satisfy the requirements in paragraph (i) or (j) of this section.

(i) For a group of two or more existing units in the same subcategory, each of which vents through a common emissions control system to a common stack, that does not receive emissions from units in other subcategories or categories, you may treat such averaging group as a single existing unit for purposes of this subpart and comply with the requirements of this subpart as if the group were a single unit.

(j) For all other groups of units subject to the common stack requirements of paragraph (h) of this section, including situations where the exhaust of affected units are each individually controlled and then sent to a common stack, the owner or operator may elect to:

(1) Conduct performance tests according to procedures specified in § 63.7520 in the common stack if affected units from other subcategories vent to the common stack. The emission limits that the group must comply with are determined by the use of Equation 6 of this section.

$$En = \sum_{i=1}^{n} (ELi \times Hi) \div \sum_{i=1}^{n} Hi \qquad \text{(Eq. 6)}$$

Where:

En = HAP emission limit, pounds per million British thermal units (lb/MMBtu), parts per million (ppm), or nanograms per dry standard cubic meter (ng/dscm).

ELi = Appropriate emission limit from Table 2 to this subpart for unit i, in units of lb/MMBtu, ppm or ng/dscm.

Hi = Heat input from unit i, MMBtu.

(2) Conduct performance tests according to procedures specified in § 63.7520 in the common stack. If affected units and non-affected units vent to the common stack, the non-affected units must be shut down or vented to a different stack during the performance test unless the facility determines to demonstrate compliance with the non-affected units venting to the stack; and

(3) Meet the applicable operating limit specified in § 63.7540 and Table 8 to this subpart for each emissions control system (except that, if each unit venting to the common stack has an applicable opacity operating limit, then a single continuous opacity monitoring system may be located in the common stack instead of in each duct to the common stack).

(k) The common stack of a group of two or more existing boilers or process heaters in the same subcategory subject to paragraph (h) of this section may be treated as a separate stack for purposes of paragraph (b) of this section and included in an emissions averaging group subject to paragraph (b) of this section.

§ 63.7525 What are my monitoring, installation, operation, and maintenance requirements?

(a) If your boiler or process heater is subject to a carbon monoxide emission limit in Table 1 or 2 to this subpart, you must install, operate, and maintain an oxygen analyzer system as defined in § 63.7575, or a carbon monoxide continuous emission monitoring system (CO CEMS) according to the procedures in paragraphs (a)(1) through (10) of this section.

(1) The oxygen analyzer system or the CO CEMS must be installed by the compliance date specified in § 63.7495. If a CO CEMS is used, the carbon monoxide level shall be monitored at the outlet of the boiler or process heater.

(2) You must operate the oxygen trim system with the oxygen level set at the minimum percent oxygen by volume that is established as the operating limit for oxygen according to Table 4 to this subpart.

(3) Each CO CEMS must be installed, operated, and maintained according to the applicable procedures under Performance Specification 4, 4A, or 4B at 40 CFR part 60, appendix B, and according to the site-specific monitoring plan developed according to § 63.7505(d).

(4) For a new unit, the initial performance evaluation shall be completed no later than [*DATE 240 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**] or 180 days after the date of initial startup, whichever is later. For an

existing unit, the initial performance evaluation shall be completed no later than [*DATE 3 YEARS AND 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**].

(5) You must conduct a performance evaluation of each CO CEMS according to the requirements in § 63.8(e) and according to Performance Specification 4, 4A, or 4B at 40 CFR part 60, appendix B. During each relative accuracy test run of the CO CEMS, emission data for carbon monoxide must be collected concurrently (or within a 30- to 60-minute period) by both the CO CEMS and by Method 10, 10A, or 10B at 40 CFR part 60, appendix A–4. The relative accuracy testing must be at representative operating conditions.

(6) For each CO CEMS, you must follow the quality assurance procedures (*e.g.,* quarterly accuracy determinations and daily calibration drift tests) of Procedure 1 of appendix F to part 60. The span value of the CO CEMS must be two times the applicable CO emission limit, expressed as a concentration.

(7) Each CO CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Collect at least four CO CEMS data values representing the four 15-minute periods in an hour, or at least two 15-minute data values during an hour when CEMS calibration, quality assurance, or maintenance activities are being performed.

(8) The CO CEMS data must be reduced as specified in § 63.8(g)(2).

(9) You must calculate one-hour arithmetic averages, corrected to 3 percent oxygen from each hour of CO CEMS data in parts per million carbon monoxide concentration. For all subcategories except for units designed to burn liquid fuels in non-continental states and territories, the one-hour arithmetic averages required shall be used to calculate the boiler operating day daily arithmetic average emissions. Calculate a 10-day rolling average from the daily averages. For units designed to burn liquid fuels in non-continental states and territories, the one-hour arithmetic averages required shall be used to calculate the 3-hour arithmetic average emissions. Use Equation 19–19 in section 12.4.1 of Method 19 of 40 CFR part 60, appendix A–7 for calculating the average carbon monoxide concentration from the hourly values.

(10) For purposes of collecting CO data, you must operate the CO CEMS as specified in § 63.7535(b). You must use all the data collected during all periods in calculating data averages and assessing compliance, except that you must exclude certain data as specified in § 63.7535(c). Periods when CO data are unavailable may constitute monitoring deviations as specified in § 63.7535(d).

(b) If your boiler or process heater has an average annual heat input rate greater than 250 MMBtu per hour from solid fossil fuel and/or residual oil, and you demonstrate compliance with the PM limit instead of the alternative total selected metals limit, you must install, certify, maintain, and operate a PM CPMS monitoring emissions discharged to the atmosphere and record the output of the system as specified in paragraphs (b)(1) through (4) of this section. For other boilers or process heaters, you may elect to use a PM CPMS operated in accordance with this section in lieu of using other CMS for monitoring PM compliance (*e.g.,* bag leak detectors, ESP secondary power, PM scrubber pressure).

(1) Install, certify, operate, and maintain your PM CPMS according to the procedures in your approved site-specific monitoring plan developed in accordance with § 63.7505(d), the requirements in § 63.7540(a)(9), and (b)(1)(i) through (iii) of this section.

(i) The operating principle of the PM CPMS must be based on in-stack or extractive light scatter, light scintillation, beta attenuation, or mass accumulation detection of PM in the exhaust gas or representative exhaust gas sample. The reportable measurement output from the PM CPMS may be expressed as milliamps, stack concentration, or other raw data signal.

(ii) The PM CPMS must have a cycle time (*i.e.,* period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes.

(iii) The PM CPMS must be capable of detecting and responding to particulate matter concentrations of no greater than 0.5 milligram per actual cubic meter.

(2) For a new unit, complete the initial performance evaluation no later than [*DATE 240 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**] or 180 days after the date of initial startup, whichever is later. For an existing unit, complete the initial performance evaluation no later than [*DATE 3 YEARS AND 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**].

(3) Collect PM CPMS hourly average output data for all boiler operating hours except as indicated in § 63.7535(a) through (d). Express the PM CPMS output as millamps, PM concentration, or other raw data signal value.

(4) Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output data collected during all boiler operating hours (*e.g.,* milliamps, PM concentration, raw data signal).

(c) If you have an applicable opacity operating limit in this rule, and are not otherwise required or elect to install and operate a PM CPMS or a bag leak detection system, you must install, operate, certify and maintain each COMS according to the procedures in paragraphs (c)(1) through (7) of this section by the compliance date specified in § 63.7495.

(1) Each COMS must be installed, operated, and maintained according to Performance Specification 1 at appendix B to part 60 of this chapter.

(2) You must conduct a performance evaluation of each COMS according to the requirements in § 63.8(e) and according to Performance Specification 1 at appendix B to part 60 of this chapter.

(3) As specified in § 63.8(c)(4)(i), each COMS must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(4) The COMS data must be reduced as specified in § 63.8(g)(2).

(5) You must include in your site-specific monitoring plan procedures and acceptance criteria for operating and maintaining each COMS according to the requirements in § 63.8(d). At a minimum, the monitoring plan must include a daily calibration drift assessment, a quarterly performance audit, and an annual zero alignment audit of each COMS.

(6) You must operate and maintain each COMS according to the requirements in the monitoring plan and the requirements of § 63.8(e). You must identify periods the COMS is out of control including any periods that the COMS fails to pass a daily calibration drift assessment, a quarterly performance audit, or an annual zero alignment audit. Any 6-minute period for which the monitoring system is out of control and data are not available for a required calculation constitutes a deviation from the monitoring requirements.

(7) You must determine and record all the 6-minute averages (and daily block averages as applicable) collected for periods during which the COMS is not out of control.

(d) If you have an operating limit that requires the use of a CMS other than a PM CPMS or COMS, you must install, operate, and maintain each CMS according to the procedures in

paragraphs (d)(1) through (5) of this section by the compliance date specified in § 63.7495.

(1) The continuous parameter monitoring system must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four successive cycles of operation to have a valid hour of data.

(2) You must operate the monitoring system as specified in § 63.7535(b), and comply with the data calculation requirements specified in § 63.7535(c).

(3) Any 15-minute period for which the monitoring system is out-of-control and data are not available for a required calculation constitutes a deviation from the monitoring requirements. Other situations that constitute a monitoring deviation are specified in § 63.7535(d).

(4) You must determine the 30-day rolling average of all recorded readings, except as provided in paragraph (d)(3) of this section.

(5) You must record the results of each inspection, calibration, and validation check.

(e) If you have an operating limit that requires the use of a flow monitoring system, you must meet the requirements in paragraphs (d) and (e)(1) through (4) of this section.

(1) You must install the flow sensor and other necessary equipment in a position that provides a representative flow.

(2) You must use a flow sensor with a measurement sensitivity of no greater than 2 percent of the expected flow rate.

(3) You must minimize the effects of swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(4) You must conduct a flow monitoring system performance evaluation in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(f) If you have an operating limit that requires the use of a pressure monitoring system, you must meet the requirements in paragraphs (d) and (f)(1) through (6) of this section.

(1) Install the pressure sensor(s) in a position that provides a representative measurement of the pressure (*e.g.,* PM scrubber pressure drop).

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a pressure sensor with a minimum tolerance of 1.27 centimeters of water or a minimum tolerance of 1 percent of the pressure monitoring system operating range, whichever is less.

(4) Perform checks at least once each process operating day to ensure pressure measurements are not obstructed (*e.g.,* check for pressure tap pluggage daily).

(5) Conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(6) If at any time the measured pressure exceeds the manufacturer's specified maximum operating pressure range, conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan and confirm that the pressure monitoring system continues to meet the performance requirements in you monitoring plan. Alternatively, install and verify the operation of a new pressure sensor.

(g) If you have an operating limit that requires a pH monitoring system, you must meet the requirements in paragraphs (d) and (g)(1) through (4) of this section.

(1) Install the pH sensor in a position that provides a representative measurement of scrubber effluent pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Conduct a performance evaluation of the pH monitoring system in accordance with your monitoring plan at least once each process operating day.

(4) Conduct a performance evaluation (including a two-point calibration with one of the two buffer solutions having a pH within 1 of the pH of the operating limit) of the pH monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than quarterly.

(h) If you have an operating limit that requires a secondary electric power monitoring system for an electrostatic precipitator (ESP) operated with a wet scrubber, you must meet the requirements in paragraphs (h)(1) and (2) of this section.

(1) Install sensors to measure (secondary) voltage and current to the precipitator collection plates.

(2) Conduct a performance evaluation of the electric power monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(i) If you have an operating limit that requires the use of a monitoring system to measure sorbent injection rate (*e.g.,* weigh belt, weigh hopper, or hopper flow measurement device), you must meet the requirements in paragraphs (d) and (i)(1) and (2) of this section.

(1) Install the system in a position(s) that provides a representative measurement of the total sorbent injection rate.

(2) Conduct a performance evaluation of the sorbent injection rate monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(j) If you are not required to use a PM CPMS and elect to use a fabric filter bag leak detection system to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate the bag leak detection system as specified in paragraphs (j)(1) through (6) of this section.

(1) You must install a bag leak detection sensor(s) in a position(s) that will be representative of the relative or absolute particulate matter loadings for each exhaust stack, roof vent, or compartment (*e.g.,* for a positive pressure fabric filter) of the fabric filter.

(2) Conduct a performance evaluation of the bag leak detection system in accordance with your monitoring plan and consistent with the guidance provided in EPA–454/R–98–015 (incorporated by reference, see § 63.14).

(3) Use a bag leak detection system certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(4) Use a bag leak detection system equipped with a device to record continuously the output signal from the sensor.

(5) Use a bag leak detection system equipped with a system that will alert when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it can be easily heard or seen by plant operating personnel.

(6) Where multiple bag leak detectors are required, the system's instrumentation and alarm may be shared among detectors.

(k) For each unit that meets the definition of limited-use boiler or process heater, you must monitor and record the operating hours per year for that unit.

(l) For each unit for which you decide to demonstrate compliance with the mercury or hydrogen chloride emissions limits in Tables 1 or 2 of this subpart by use of a CEMS for mercury or hydrogen chloride, you must install, certify, maintain, and operate a CEMS measuring emissions discharged to the atmosphere and record the output of the system as specified in paragraphs (l)(1) through (8) of this section. For hydrogen chloride, this option for an affected unit takes effect on the date a final

performance specification for a hydrogen chloride CEMS is published in the **Federal Register** or the date of approval of a site-specific monitoring plan.

(1) Notify the Administrator one month before starting use of the CEMS, and notify the Administrator one month before stopping use of the CEMS.

(2) Each CEMS shall be installed, certified, operated, and maintained according to the requirements in § 63.7540(a)(14) for a mercury CEMS and § 63.7540(a)(15) for a hydrogen chloride CEMS.

(3) For a new unit, you must complete the initial performance evaluation of the CEMS by the latest of the dates specified in paragraph (l)(3)(i) through (iii) of this section.

(i) No later than [*DATE 240 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**].

(ii) No later 180 days after the date of initial startup.

(iii) No later 180 days after notifying the Administrator before starting to use the CEMS in place of performance testing or fuel analysis to demonstrate compliance.

(4) For an existing unit, you must complete the initial performance evaluation by the latter of the two dates specified in paragraph (l)(4)(i) and (ii) of this section.

(i) No later than [*DATE 3 YEARS AND 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**].

(ii) No later 180 days after notifying the Administrator before starting to use the CEMS in place of performance testing or fuel analysis to demonstrate compliance.

(5) Compliance with the applicable emissions limit shall be determined based on the 30-day rolling average of the hourly arithmetic average emissions rates using the continuous monitoring system outlet data. The 30-day rolling arithmetic average emission rate (lb/MMBtu) shall be calculated using the equations in EPA Reference Method 19 at 40 CFR part 60, appendix A–7, but substituting the mercury or hydrogen chloride concentration for the pollutant concentrations normally used in Method 19.

(6) Collect CEMS hourly averages for all operating hours on a 30-day rolling average basis. Collect at least four CMS data values representing the four 15-minute periods in an hour, or at least two 15-minute data values during an hour when CMS calibration, quality assurance, or maintenance activities are being performed.

(7) The one-hour arithmetic averages required shall be expressed in lb/MMBtu and shall be used to calculate the boiler operating day daily arithmetic average emissions.

(8) If you are using an add-on control to comply with the mercury or hydrogen chloride emission limit, you are allowed to substitute the use of the mercury or hydrogen chloride CEMS for the applicable fuel analysis, annual performance test, and operating limits specified in Table 4 to this subpart to demonstrate compliance with the mercury or hydrogen chloride emissions limit.

§ 63.7530 How do I demonstrate initial compliance with the emission limitations, fuel specifications and work practice standards?

(a) You must demonstrate initial compliance with each emission limit that applies to you by conducting initial performance tests and fuel analyses and establishing operating limits, as applicable, according to § 63.7520, paragraphs (b) and (c) of this section, and Tables 5 and 7 to this subpart. If applicable, you must also install, operate, and maintain all applicable CMS (including CEMS, COMS, and continuous parameter monitoring systems) according to § 63.7525.

(b) If you demonstrate compliance through performance testing, you must establish each site-specific operating limit in Table 4 to this subpart that applies to you according to the requirements in § 63.7520, Table 7 to this subpart, and paragraph (b)(4) of this section, as applicable. You must also conduct fuel analyses according to § 63.7521 and establish maximum fuel pollutant input levels according to paragraphs (b)(1) through (3) of this section, as applicable, and as specified in § 63.7510(a)(2). (Note that § 63.7510(a)(2) exempts certain fuels from the fuel analysis requirements.) However, if you switch fuel(s) and cannot show that the new fuel(s) does (do) not increase the chlorine, mercury, or total selected metals input into the unit through the results of fuel analysis, then you must repeat the performance test to demonstrate compliance while burning the new fuel(s).

(1) You must establish the maximum chlorine fuel input (Clinput) during the initial fuel analysis according to the procedures in paragraphs (b)(1)(i) through (iii) of this section.

(i) You must determine the fuel type or fuel mixture that you could burn in your boiler or process heater that has the highest content of chlorine.

(ii) During the fuel analysis for hydrogen chloride, you must determine the fraction of the total heat input for each fuel type burned (Qi) based on the fuel mixture that has the highest content of chlorine, and the average chlorine concentration of each fuel type burned (Ci).

(iii) You must establish a maximum chlorine input level using Equation 7 of this section.

$$Clinput = \sum_{i=1}^{n} (Ci \times Qi) \qquad \text{(Eq. 7)}$$

Where:

Clinput = Maximum amount of chlorine entering the boiler or process heater through fuels burned in units of pounds per million Btu.

Ci = Arithmetic average concentration of chlorine in fuel type, i, analyzed according to § 63.7521, in units of pounds per million Btu.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of chlorine. If you do not burn multiple fuel types during the performance testing, it is not necessary to determine the value of this term. Insert a value of ''1'' for Qi.

n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest content of chlorine.

(2) You must establish the maximum mercury fuel input level (Mercuryinput) during the initial fuel analysis using the procedures in paragraphs (b)(2)(i) through (iii) of this section.

(i) You must determine the fuel type or fuel mixture that you could burn in your boiler or process heater that has the highest content of mercury.

(ii) During the compliance demonstration for mercury, you must determine the fraction of total heat input for each fuel burned (Qi) based on the fuel mixture that has the highest content of mercury, and the average mercury concentration of each fuel type burned (HGi).

(iii) You must establish a maximum mercury input level using Equation 8 of this section.

$$Mercuryinput = \sum_{i=1}^{n} (HGi \times Qi) \qquad \text{(Eq. 8)}$$

Where:

Mercuryinput = Maximum amount of mercury entering the boiler or process heater through fuels burned in units of pounds per million Btu.

HGi = Arithmetic average concentration of mercury in fuel type, i, analyzed according to § 63.7521, in units of pounds per million Btu.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest mercury content. If you do not burn multiple fuel types during the performance test, it is not necessary to determine the value of this term. Insert a value of ''1'' for Qi.

n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest content of mercury.

(3) If you opt to comply with the alternative total selected metals limit, you must establish the maximum total selected metals fuel input (TSMinput) for solid fuels during the initial fuel analysis according to the procedures in paragraphs (b)(3)(i) through (iii) of this section.

(i) You must determine the fuel type or fuel mixture that you could burn in your boiler or process heater that has the highest content of total selected metals.

(ii) During the fuel analysis for total selected metals, you must determine the fraction of the total heat input for each fuel type burned (Qi) based on the fuel mixture that has the highest content of total selected metals, and the average total selected metals concentration of each fuel type burned (TSMi).

(iii) You must establish a maximum total selected metals input level using Equation 9 of this section.

$$TSMinput = \sum_{i=1}^{n} \left(TSMi \times Qi \right) \qquad \text{(Eq. 9)}$$

Where:

TSMinput = Maximum amount of total selected metals entering the boiler or process heater through fuels burned in units of pounds per million Btu.

TSMi = Arithmetic average concentration of total selected metals in fuel type, i, analyzed according to § 63.7521, in units of pounds per million Btu.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of total selected metals. If you do not burn multiple fuel types during the performance testing, it is not necessary to determine the value of this term. Insert a value of ''1'' for Qi.

n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest content of total selected metals.

(4) You must establish parameter operating limits according to paragraphs (b)(4)(i) through (vii) of this section. As indicated in Table 4 to this subpart, you are not required to establish and comply with the operating parameter limits when you are using a CEMS to monitor and demonstrate compliance with the applicable emission limit for that control device parameter.

(i) For a wet acid gas scrubber, you must establish the minimum scrubber effluent pH and liquid flow rate as defined in § 63.7575, as your operating limits during the three-run performance test during which you demonstrate compliance with your applicable limit. If you use a wet scrubber and you conduct separate performance tests for hydrogen chloride and mercury emissions, you must establish one set of minimum scrubber effluent pH, liquid flow rate, and pressure drop operating limits. The minimum scrubber effluent pH operating limit must be established during the hydrogen chloride performance test. If you conduct multiple performance tests, you must set the minimum liquid flow rate operating limit at the higher of the minimum values established during the performance tests.

(ii) For any particulate control device (*e.g.,* ESP, particulate wet scrubber, fabric filter) for which you use a PM CPMS, you must establish your operating limit during the three-run performance during which you demonstrate compliance with your applicable limit. The PM CPMS operating limit is the 1-hour average PM CPMS output value recorded during the performance test. If you conduct separate performance tests for PM and total selected metals, you must set the maximum PM CPMS operating limits at the lower of maximum PM CPMS values established during the performance tests.

(iii) For a particulate wet scrubber, you must establish the minimum pressure drop and liquid flow rate as defined in § 63.7575, as your operating limits during the three-run performance test during which you demonstrate compliance with your applicable limit. If you use a wet scrubber and you conduct separate performance tests for particulate matter and total selected metals emissions, you must establish one set of minimum scrubber liquid flow rate and pressure drop operating limits. The minimum scrubber effluent pH operating limit must be established during the hydrogen chloride performance test. If you conduct multiple performance tests, you must set the minimum liquid flow rate and pressure drop operating limits at the higher of the minimum values established during the performance tests.

(iv) For an electrostatic precipitator operated with a wet scrubber, you must establish the minimum voltage and secondary amperage (or total power input), as defined in § 63.7575, as your operating limits during the three-run performance test during which you demonstrate compliance with your applicable limit. (These operating limits do not apply to electrostatic precipitators that are operated as dry controls without a wet scrubber.)

(v) For a dry scrubber, you must establish the minimum sorbent injection rate for each sorbent, as defined in § 63.7575, as your operating limit during the three-run performance test during which you demonstrate compliance with your applicable limit.

(vi) For activated carbon injection, you must establish the minimum activated carbon injection rate, as defined in § 63.7575, as your operating limit during the three-run performance test during which you demonstrate compliance with your applicable limit.

(vii) The operating limit for boilers or process heaters with fabric filters that demonstrate continuous compliance through bag leak detection systems is that a bag leak detection system be installed according to the requirements in § 63.7525, and that each fabric filter must be operated such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month period.

(c) If you elect to demonstrate compliance with an applicable emission limit through fuel analysis, you must conduct fuel analyses according to § 63.7521 and follow the procedures in paragraphs (c)(1) through (5) of this section.

(1) If you burn more than one fuel type, you must determine the fuel mixture you could burn in your boiler or process heater that would result in the maximum emission rates of the pollutants that you elect to demonstrate compliance through fuel analysis.

(2) You must determine the 90th percentile confidence level fuel

pollutant concentration of the composite samples analyzed for each fuel type using the one-sided z-statistic test described in Equation 10 of this section.

$$P90 = mean + (SD \times t) \quad \text{(Eq. 10)}$$

Where:

P90 = 90th percentile confidence level pollutant concentration, in pounds per million Btu.

Mean = Arithmetic average of the fuel pollutant concentration in the fuel samples analyzed according to § 63.7521, in units of pounds per million Btu.

SD = Standard deviation of the pollutant concentration in the fuel samples analyzed according to § 63.7521, in units of pounds per million Btu.

T = t distribution critical value for 90th percentile (0.1) probability for the appropriate degrees of freedom (number of samples minus one) as obtained from a Distribution Critical Value Table.

(3) To demonstrate compliance with the applicable emission limit for hydrogen chloride, the hydrogen chloride emission rate that you calculate for your boiler or process heater using Equation 11 of this section must not exceed the applicable emission limit for hydrogen chloride.

$$HCl = \sum_{i=1}^{n} (Ci90 \times Qi \times 1.028) \quad \text{(Eq. 11)}$$

Where:

HCl = Hydrogen chloride emission rate from the boiler or process heater in units of pounds per million Btu.

Ci90 = 90th percentile confidence level concentration of chlorine in fuel type, i, in units of pounds per million Btu as calculated according to Equation 10 of this section.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of chlorine. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of ''1'' for Qi.

n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest content of chlorine.

1.028 = Molecular weight ratio of hydrogen chloride to chlorine.

(4) To demonstrate compliance with the applicable emission limit for mercury, the mercury emission rate that you calculate for your boiler or process heater using Equation 12 of this section must not exceed the applicable emission limit for mercury.

$$Mercury = \sum_{i=1}^{n} (Hgi90 \times Qi) \quad \text{(Eq. 12)}$$

Where:

Mercury = Mercury emission rate from the boiler or process heater in units of pounds per million Btu.

Hgi90 = 90th percentile confidence level concentration of mercury in fuel, i, in units of pounds per million Btu as calculated according to Equation 10 of this section.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest mercury content. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of ''1'' for Qi.

n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest mercury content.

(5) To demonstrate compliance with the applicable emission limit for total selected metals for solid fuels, the total selected metals emission rate that you calculate for your boiler or process heater from solid fuels using Equation 13 of this section must not exceed the applicable emission limit for total selected metals.

$$Metals = \sum_{i=1}^{n} (TSM90i \times Qi) \quad \text{(Eq. 13)}$$

Where:

Metals = Total selected metals emission rate from the boiler or process heater in units of pounds per million Btu.

TSMi90 = 90th percentile confidence level concentration of total selected metals in fuel, i, in units of pounds per million Btu as calculated according to Equation 10 of this section.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest total selected metals content. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of ''1'' for Qi.

n = Number of different fuel types burned in your boiler or process heater for the mixture that has the highest total selected metals content.

(d) If you own or operate an existing unit with a heat input capacity of less than 10 million Btu per hour, you must submit a signed statement in the Notification of Compliance Status report that indicates that you conducted a tune-up of the unit.

(e) You must include with the Notification of Compliance Status a signed certification that the energy assessment was completed according to Table 3 to this subpart and is an accurate depiction of your facility.

(f) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.7545(e).

(g) If you elect to demonstrate that a gaseous fuel meets the specifications of an other gas 1 fuel as defined in § 63.7575, you must conduct an initial fuel specification analyses according to § 63.7521(f) through (i). If the mercury constituents in the gaseous fuels will never exceed the specification included in the definition, you will include a signed certification with the Notification of Compliance Status that the initial fuel specification test meets the gas specification outlined in the definition of other gas 1 fuels. If your gas constituents could vary above the specification, you will conduct monthly testing according to the procedures in § 63.7521(f) through (i) and § 63.7540(c)

and maintain records of the results of the testing as outlined in § 63.7555(g).

(h) If you own or operate a unit subject to emission limits in Tables 1 or 2 to this subpart, you must meet the work practice standard according to Table 3 of this subpart. You must submit a signed statement in the Notification of Compliance Status report that indicates that you employed good combustion practices and you maintained oxygen concentrations as specified by the boiler manufacturer for each startup and shutdown event.

§ 63.7533 Can I use emission credits earned from implementation of energy conservation measures to comply with this subpart?

(a) If you elect to comply with the alternative equivalent steam output-based emission limits, instead of the heat input-based limits listed in Table 2 to this subpart, and you want to take credit for implementing energy conservation measures identified in an energy assessment, you may demonstrate compliance using emission reduction credits according to the procedures in this section. You may use this compliance approach for an existing affected boiler for demonstrating initial compliance according to § 63.7522(e) and for demonstrating monthly compliance according to § 63.7522(f). Owners or operators using this compliance approach must establish an emissions benchmark, calculate and document the emission credits, develop an Implementation Plan, comply with the general reporting requirements, and apply the emission credit according to the procedures in paragraphs (b) through (f) of this section. You cannot use this compliance approach for a new or reconstructed affected boiler.

(b) For each existing affected boiler for which you intend to apply emissions credits, establish a benchmark from which emission reduction credits may be generated by determining the actual annual fuel heat input to the affected boiler before initiation of an energy conservation activity to reduce energy demand (*i.e.,* fuel usage) according to paragraphs (b)(1) through (4) of this section. The benchmark shall be expressed in trillion Btu per year heat input.

(1) The benchmark from which emission credits may be generated shall be determined by using the most representative, accurate, and reliable process available for the source. The benchmark shall be established for a one-year period before the date that an energy demand reduction occurs, unless it can be demonstrated that a different time period is more representative of historical operations.

(2) Determine the starting point from which to measure progress. Inventory all fuel purchased and generated on-site (off-gases, residues) in physical units (MMBtu, million cubic feet, *etc.*).

(3) Document all uses of energy from the affected boiler. Use the most recent data available.

(4) Collect non-energy related facility and operational data to normalize, if necessary, the benchmark to current operations, such as building size, operating hours, *etc.* If possible, use actual data that are current and timely rather than estimated data.

(c) Emissions credits can be generated if the energy conservation measures were implemented after January 1, 2008 and if sufficient information is available to determine the appropriate value of credits.

(1) The following emission points cannot be used to generate emissions averaging credits:

(i) Energy conservation measures implemented on or before January 1, 2008, unless the level of energy demand reduction is increased after January 1, 2008, in which case credit will be allowed only for change in demand reduction achieved after January 1, 2008.

(ii) Emission credits on shut-down boilers. Boilers that are shut down cannot be used to generate credits.

(2) For all points included in calculating emissions credits, the owner or operator shall:

(i) Calculate annual credits for all energy demand points. Use Equation 14 to calculate credits. Energy conservation measures that meet the criteria of paragraph (c)(1) of this section shall not be included, except as specified in paragraph (c)(1)(i) of this section.

(3) Credits are generated by the difference between the benchmark that is established for each affected boiler, and the actual energy demand reductions from energy conservation measures implemented after January 1, 2008. Credits shall be calculated using Equation 14 of this section as follows:

(i) The overall equation for calculating credits is:

$$ECredits = \left(\sum_{i=1}^{n} EIS_{iactual} \right) \div EI_{baseline} \qquad \text{(Eq. 14)}$$

Where:

ECredits = Energy Input Savings for all energy conservation measures implemented for an affected boiler, expressed as a decimal fraction of the baseline energy input.

$EIS_{iactual}$ = Energy Input Savings for each energy conservation measure, i, implemented for an affected boiler, million Btu per year.

$EI_{baseline}$ = Energy Input baseline for the affected boiler, million Btu per year.

n = Number of energy conservation measures included in the emissions credit for the affected boiler.

(d) The owner or operator shall develop and submit for approval an Implementation Plan containing all of the information required in this paragraph for all boilers to be included in an emissions credit approach. The Implementation Plan shall identify all existing affected boilers to be included in applying the emissions credits. The Implementation Plan shall include a description of the energy conservation measures implemented and the energy savings generated from each measure and an explanation of the criteria used for determining that savings. You must submit the implementation plan for emission credits to the applicable delegated authority for review and approval no later than 180 days before the date on which the facility intends to demonstrate compliance using the emission credit approach.

(e) The emissions rate as calculated using Equation 15 of this section from each existing boiler participating in the emissions credit option must be in compliance with the limits in Table 2 to this subpart at all times following the compliance date specified in § 63.7495.

(f) You must use Equation 15 of this section to demonstrate initial compliance by demonstrating that the emissions from the affected boiler participating in the emissions credit compliance approach do not exceed the emission limits in Table 2 to this subpart.

$$E_{adj} = E_m \times (1 - ECredits) \quad \text{(Eq. 15)}$$

Where:

E_{adj} = Emission level adjusted by applying the emission credits earned, lb per million Btu steam output for the affected boiler.

E_m = Emissions measured during the performance test, lb per million Btu steam output for the affected boiler.

ECredits = Emission credits from Equation 14 for the affected boiler.

Continuous Compliance Requirements

§ 63.7535 Is there a minimum amount of monitoring data I must obtain?

(a) You must monitor and collect data according to this section and the site-specific monitoring plan required by § 63.7505(d).

(b) You must operate the monitoring system and collect data at all required intervals at all times that the affected source is operating and compliance is required, except for periods of monitoring system malfunctions or out of control periods (see § 63.8(c)(7) of this part), and required monitoring system quality assurance or control activities, including, as applicable, calibration checks, required zero and span adjustments, and scheduled CMS maintenance as defined in your site-specific monitoring plan. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions or out-of-control periods and to return the monitoring system to operation as expeditiously as practicable.

(c) You may not use data recorded during monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, or required monitoring system quality assurance or control activities in data averages and calculations used to report emissions or operating levels. You must record and make available upon request results of CMS performance audits and dates and duration of periods when the CMS is out of control to completion of the corrective actions necessary to return the CMS to operation consistent with your site-specific monitoring plan. You must use all the data collected during all other periods in assessing compliance and the operation of the control device and associated control system.

(d) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits, calibration checks, and required zero and span adjustments), failure to collect required data is a deviation of the monitoring requirements.

§ 63.7540 How do I demonstrate continuous compliance with the emission limitations, fuel specifications and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit in Tables 1 and 2 to this subpart, the work practice standards in Table 3 to this subpart, and the operating limits in Table 4 to this subpart that applies to you according to the methods specified in Table 8 to this subpart and paragraphs (a)(1) through (17) of this section.

(1) Following the date on which the initial compliance demonstration is completed or is required to be completed under §§ 63.7 and 63.7510, whichever date comes first, operation above the established maximum or below the established minimum operating limits shall constitute a deviation of established operating limits listed in Table 4 of this subpart except during performance tests conducted to determine compliance with the emission limits or to establish new operating limits. Operating limits must be confirmed or reestablished during performance tests.

(2) As specified in § 63.7550(c), you must keep records of the type and amount of all fuels burned in each boiler or process heater during the reporting period to demonstrate that all fuel types and mixtures of fuels burned would result in either of the following:

(i) Lower emissions of hydrogen chloride, mercury, and total selected metals than the applicable emission limit for each pollutant, if you demonstrate compliance through fuel analysis.

(ii) Lower fuel input of chlorine, mercury, and total selected metals than the maximum values calculated during the last performance test, if you demonstrate compliance through performance testing.

(3) If you demonstrate compliance with an applicable hydrogen chloride emission limit through fuel analysis for a solid or liquid fuel and you plan to burn a new type of solid or liquid fuel, you must recalculate the hydrogen chloride emission rate using Equation 11 of § 63.7530 according to paragraphs (a)(3)(i) through (iii) of this section. You are not required to complete fuel analyses for the fuels described in § 63.7510(a)(2)(i) through (iii). You may exclude the fuels described in § 63.7510(a)(2)(i) through (iii) when recalculating the hydrogen chloride emission rate.

(i) You must determine the chlorine concentration for any new fuel type in units of pounds per million Btu, based on supplier data or your own fuel analysis, according to the provisions in your site-specific fuel analysis plan developed according to § 63.7521(b).

(ii) You must determine the new mixture of fuels that will have the highest content of chlorine.

(iii) Recalculate the hydrogen chloride emission rate from your boiler or process heater under these new conditions using Equation 11 of § 63.7530. The recalculated hydrogen chloride emission rate must be less than the applicable emission limit.

(4) If you demonstrate compliance with an applicable hydrogen chloride emission limit through performance testing and you plan to burn a new type of fuel or a new mixture of fuels, you must recalculate the maximum chlorine input using Equation 7 of § 63.7530. If the results of recalculating the maximum chlorine input using Equation 7 of § 63.7530 are greater than the maximum chlorine input level established during the previous performance test, then you must conduct a new performance test within 60 days of burning the new fuel type or fuel mixture according to the procedures in § 63.7520 to demonstrate that the hydrogen chloride emissions do not exceed the emission limit. You must also establish new operating limits based on this performance test according to the procedures in § 63.7530(b). In recalculating the maximum chlorine input and establishing the new operating limits, you are not required to complete fuel analyses for and include the fuels described in § 63.7510(a)(2)(i) through (iii).

(5) If you demonstrate compliance with an applicable mercury emission limit through fuel analysis, and you plan to burn a new type of fuel, you must recalculate the mercury emission rate using Equation 12 of § 63.7530 according to the procedures specified in paragraphs (a)(5)(i) through (iii) of this

section. You are not required to complete fuel analyses for the fuels described in § 63.7510(a)(2)(i) through (iii). You may exclude the fuels described in § 63.7510(a)(2)(i) through (iii) when recalculating the mercury emission rate.

(i) You must determine the mercury concentration for any new fuel type in units of pounds per million Btu, based on supplier data or your own fuel analysis, according to the provisions in your site-specific fuel analysis plan developed according to § 63.7521(b).

(ii) You must determine the new mixture of fuels that will have the highest content of mercury.

(iii) Recalculate the mercury emission rate from your boiler or process heater under these new conditions using Equation 12 of § 63.7530. The recalculated mercury emission rate must be less than the applicable emission limit.

(6) If you demonstrate compliance with an applicable mercury emission limit through performance testing, and you plan to burn a new type of fuel or a new mixture of fuels, you must recalculate the maximum mercury input using Equation 8 of § 63.7530. If the results of recalculating the maximum mercury input using Equation 8 of § 63.7530 are higher than the maximum mercury input level established during the previous performance test, then you must conduct a new performance test within 60 days of burning the new fuel type or fuel mixture according to the procedures in § 63.7520 to demonstrate that the mercury emissions do not exceed the emission limit. You must also establish new operating limits based on this performance test according to the procedures in § 63.7530(b). You are not required to complete fuel analyses for the fuels described in § 63.7510(a)(2)(i) through (iii). You may exclude the fuels described in § 63.7510(a)(2)(i) through (iii) when recalculating the mercury emission rate.

(7) If your unit is controlled with a fabric filter, and you demonstrate continuous compliance using a bag leak detection system, you must initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions as soon as practical, and operate and maintain the fabric filter system such that the alarm does not sound more than 5 percent of the operating time during a 6-month period. You must also keep records of the date, time, and duration of each alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of the operating time during each 6-month period that the alarm sounds. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken to initiate corrective action.

(8) If you install a CO CEMS according to § 63.7525(a), then you must meet the requirements in paragraphs (a)(8)(i) through (iii) of this section.

(i) Continuously monitor CO according to §§ 63.7525(a) and 63.7535.

(ii) Maintain a CO emission level below or at your applicable alternative CO CEMS-based standard in Tables 1 or 2 to this subpart at all times.

(iii) Keep records of CO levels according to § 63.7555(b).

(9) The owner or operator of an affected source using a PM CPMS to meet requirements of this subpart shall install, certify, operate, and maintain the PM CPMS in accordance with your site-specific monitoring plan as required in § 63.7505(d).

(10) If your boiler or process heater is in either the natural gas, refinery gas, other gas 1, or Metal Process Furnace subcategories and has a heat input capacity of 10 million Btu per hour or greater, you must conduct a tune-up of the boiler or process heater annually to demonstrate continuous compliance as specified in paragraphs (a)(10)(i) through (vi) of this section. This requirement does not apply to limited-use boilers and process heaters, as defined in § 63.7575.

(i) As applicable, inspect the burner, and clean or replace any components of the burner as necessary (you may delay the burner inspection until the next scheduled or unscheduled unit shutdown);

(ii) Inspect the flame pattern, as applicable, and adjust the burner as necessary to optimize the flame pattern. The adjustment should be consistent with the manufacturer's specifications, if available;

(iii) Inspect the system controlling the air-to-fuel ratio, as applicable, and ensure that it is correctly calibrated and functioning properly;

(iv) Optimize total emissions of carbon monoxide. This optimization should be consistent with the manufacturer's specifications, if available;

(v) Measure the concentrations in the effluent stream of carbon monoxide in parts per million, by volume, and oxygen in volume percent, before and after the adjustments are made (measurements may be either on a dry or wet basis, as long as it is the same basis before and after the adjustments are made); and

(vi) Maintain on-site and submit, if requested by the Administrator, an annual report containing the information in paragraphs (a)(10)(vi)(A) through (C) of this section,

(A) The concentrations of carbon monoxide in the effluent stream in parts per million by volume, and oxygen in volume percent, measured before and after the adjustments of the boiler;

(B) A description of any corrective actions taken as a part of the combustion adjustment; and

(C) The type and amount of fuel used over the 12 months prior to the annual adjustment, but only if the unit was physically and legally capable of using more than one type of fuel during that period. Units sharing a fuel meter may estimate the fuel used by each unit.

(11) If your boiler or process heater has a heat input capacity of less than 10 million Btu per hour (except as specified in paragraph (a)(12) of this section), or meets the definition of limited-use boiler or process heater in § 63.7575, you must conduct a biennial tune-up of the boiler or process heater as specified in paragraphs (a)(10)(i) through (a)(10)(vi) of this section to demonstrate continuous compliance.

(12) If your boiler or process heater has a heat input capacity of less than 5 million Btu per hour, and the unit is in the units designed to burn natural gas, refinery gas or other gas 1 fuels, units designed to burn gas 2 (other), or units designed to burn light liquid subcategories, you must conduct a tune-up of the boiler or process heater every 5 years as specified in paragraphs (a)(10)(i) through (vi) of this section to demonstrate continuous compliance. You may delay the burner inspection specified in paragraph (a)(10)(i) of this section until the next scheduled or unscheduled unit shutdown, but you must inspect each burner at least once every 72 months.

(13) If the unit is not operating on the required date for a tune-up, the tune-up must be conducted within one week of startup.

(14) If you are using a CEMS measuring mercury emissions to meet requirements of this subpart you must install, certify, operate, and maintain the mercury CEMS as specified in paragraphs (a)(14)(i) and (ii) of this section.

(i) Operate the mercury CEMS in accordance with performance

specification 12A of 40 CFR part 60, appendix B or operate a sorbent trap based integrated monitor in accordance with performance specification 12B of 40 CFR part 60, appendix B. The duration of the performance test must be a calendar month. For each calendar month in which the unit operates, you must obtain hourly mercury concentration data, and stack gas volumetric flow rate data.

(ii) If you are using a mercury CEMS, you must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the mercury mass emissions rate to the atmosphere according to the requirements of performance specifications 6 and 12A of 40 CFR part 60, appendix B, and quality assurance procedure 6 of 40 CFR part 60, appendix F.

(15) If you are using a CEMS to measure hydrogen chloride emissions to meet requirements of this subpart, you must install, certify, operate, and maintain the hydrogen chloride CEMS as specified in paragraphs (a)(15)(i) and (ii) of this section. This option for an affected unit takes effect on the date a final performance specification for a hydrogen chloride CEMS is published in the **Federal Register** or the date of approval of a site-specific monitoring plan.

(i) Operate the continuous emissions monitoring system in accordance with the applicable performance specification in 40 CFR part 60, appendix B. The duration of the performance test must be a calendar month. For each calendar month in which the unit operates, you must obtain hourly hydrogen chloride concentration data, and stack gas volumetric flow rate data.

(ii) If you are using a hydrogen chloride continuous emissions monitoring system, you must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the hydrogen chloride mass emissions rate to the atmosphere according to the requirements of the applicable performance specification of 40 CFR part 60, appendix B, and the quality assurance procedures of 40 CFR part 60, appendix F.

(16) If you demonstrate compliance with an applicable total selected metals emission limit through performance testing, and you plan to burn a new type of fuel or a new mixture of fuels, you must recalculate the maximum total selected metals input using Equation 9 of § 63.7530. If the results of recalculating the maximum total selected metals input using Equation 9 of § 63.7530 are higher than the maximum total selected input level established during the previous performance test, then you must conduct a new performance test within 60 days of burning the new fuel type or fuel mixture according to the procedures in § 63.7520 to demonstrate that the total selected metals emissions do not exceed the emission limit. You must also establish new operating limits based on this performance test according to the procedures in § 63.7530(b). You are not required to complete fuel analyses for the fuels described in § 63.7510(a)(2)(i) through (iii). You may exclude the fuels described in § 63.7510(a)(2)(i) through (iii) when recalculating the total selected metals emission rate.

(17) If you demonstrate compliance with an applicable total selected metals emission limit through fuel analysis for solid fuels, and you plan to burn a new type of fuel, you must recalculate the total selected metals emission rate using Equation 13 of § 63.7530 according to the procedures specified in paragraphs (a)(5)(i) through (iii) of this section. You are not required to complete fuel analyses for the fuels described in § 63.7510(a)(2)(i) through (iii). You may exclude the fuels described in § 63.7510(a)(2)(i) through (iii) when recalculating the total selected metals emission rate.

(i) You must determine the total selected metals concentration for any new fuel type in units of pounds per million Btu, based on supplier data or your own fuel analysis, according to the provisions in your site-specific fuel analysis plan developed according to § 63.7521(b).

(ii) You must determine the new mixture of fuels that will have the highest content of total selected metals.

(iii) Recalculate the total selected metals emission rate from your boiler or process heater under these new conditions using Equation 13 of § 63.7530. The recalculated total selected metals emission rate must be less than the applicable emission limit.

(b) You must report each instance in which you did not meet each emission limit and operating limit in Tables 1 through 4 to this subpart that apply to you. These instances are deviations from the emission limits or operating limits, respectively, in this subpart. These deviations must be reported according to the requirements in § 63.7550.

(c) If you elected to demonstrate that the unit meets the specification for mercury for the other gas 1 subcategory and you cannot submit a signed certification under § 63.7545(g) because the constituents could exceed the specification, you must conduct monthly fuel specification testing of the gaseous fuels, according to the procedures in § 63.7521(f) through (i).

(d) For periods of startup and shutdown, you must meet the work practice standards according to Table 3 of this subpart.

§ 63.7541 How do I demonstrate continuous compliance under the emissions averaging provision?

(a) Following the compliance date, the owner or operator must demonstrate compliance with this subpart on a continuous basis by meeting the requirements of paragraphs (a)(1) through (5) of this section.

(1) For each calendar month, demonstrate compliance with the average weighted emissions limit for the existing units participating in the emissions averaging option as determined in § 63.7522(f) and (g).

(2) You must maintain the applicable opacity limit according to paragraphs (a)(2)(i) and (ii) of this section.

(i) For each existing unit participating in the emissions averaging option that is equipped with a dry control system and not vented to a common stack, maintain opacity at or below the applicable limit.

(ii) For each group of units participating in the emissions averaging option where each unit in the group is equipped with a dry control system and vented to a common stack that does not receive emissions from non-affected units, maintain opacity at or below the applicable limit at the common stack.

(3) For each existing unit participating in the emissions averaging option that is equipped with a wet scrubber, maintain the 30-day rolling average parameter values at or below the operating limits established during the most recent performance test.

(4) For each existing unit participating in the emissions averaging option that has an approved alternative operating plan, maintain the 30-day rolling average parameter values at or below the operating limits established in the most recent performance test.

(5) For each existing unit participating in the emissions averaging option venting to a common stack configuration containing affected units from other subcategories, maintain the appropriate operating limit for each unit as specified in Table 4 to this subpart that applies.

(b) Any instance where the owner or operator fails to comply with the continuous monitoring requirements in paragraphs (a)(1) through (5) of this section is a deviation.

Notification, Reports, and Records

§ 63.7545 What notifications must I submit and when?

(a) You must submit to the delegated authority all of the notifications in § 63.7(b) and (c), § 63.8(e), (f)(4) and (6), and § 63.9(b) through (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you startup your affected source before [*DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**], you must submit an Initial Notification not later than 120 days after [*DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**].

(c) As specified in § 63.9(b)(4) and (b)(5), if you startup your new or reconstructed affected source on or after [*DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*], you must submit an Initial Notification not later than 15 days after the actual date of startup of the affected source.

(d) If you are required to conduct a performance test you must submit a Notification of Intent to conduct a performance test at least 60 days before the performance test is scheduled to begin.

(e) If you are required to conduct an initial compliance demonstration as specified in § 63.7530(a), you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). For the initial compliance demonstration for each affected source, you must submit the Notification of Compliance Status, including all performance test results and fuel analyses, before the close of business on the 60th day following the completion of all performance test and/or other initial compliance demonstrations for the affected source according to § 63.10(d)(2). The Notification of Compliance Status report must contain all the information specified in paragraphs (e)(1) through (8), as applicable.

(1) A description of the affected unit(s) including identification of which subcategory the unit is in, the design heat input capacity of the unit, a description of the add-on controls used on the unit, description of the fuel(s) burned, including whether the fuel(s) were determined by you or EPA through a petition process to be a non-waste under § 241.3, whether the fuel(s) were processed from discarded non-hazardous secondary materials within the meaning of § 241.3, and justification for the selection of fuel(s) burned during the compliance demonstration.

(2) Summary of the results of all performance tests and fuel analyses, and calculations conducted to demonstrate initial compliance including all established operating limits.

(3) A summary of the maximum carbon monoxide emission levels recorded during the performance test to show that you have met any applicable emission standard in Table 1 or 2 to this subpart, if you are not using a CO CEMS to demonstrate compliance.

(4) Identification of whether you plan to demonstrate compliance with each applicable emission limit through performance testing, a CEMS, or fuel analysis.

(5) Identification of whether you plan to demonstrate compliance by emissions averaging and identification of whether you plan to demonstrate compliance by using emission credits through energy conservation:

(i) If you plan to demonstrate compliance by emission averaging, report the emission level that was being achieved or the control technology employed on [*DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* **Federal Register**].

(6) A signed certification that you have met all applicable emission limits and work practice standards.

(7) If you had a deviation from any emission limit, work practice standard, or operating limit, you must also submit a description of the deviation, the duration of the deviation, and the corrective action taken in the Notification of Compliance Status report.

(8) In addition to the information required in § 63.9(h)(2), your notification of compliance status must include the following certification(s) of compliance, as applicable, and signed by a responsible official:

(i) ''This facility complies with the requirements in § 63.7540(a)(10), (11), or (12) to conduct an annual, biennial, or 5-year tune-up, as applicable, of each unit.''

(ii) ''This facility has had an energy assessment performed according to § 63.7530(e).''

(iii) Except for units that qualify for a statutory exemption as provided in section 129(g)(1) of the Clean Air Act, include the following: ''No secondary materials that are solid waste were combusted in any affected unit.''

(f) If you operate a unit designed to burn natural gas, refinery gas, or other gas 1 fuels that is subject to this subpart, and you intend to use a fuel other than natural gas, refinery gas, gaseous fuel subject to another subpart of this part, or other gas 1 fuel to fire the affected unit during a period of natural gas curtailment or supply interruption, as defined in § 63.7575, you must submit a notification of alternative fuel use within 48 hours of the declaration of each period of natural gas curtailment or supply interruption, as defined in § 63.7575. The notification must include the information specified in paragraphs (f)(1) through (5) of this section.

(1) Company name and address.

(2) Identification of the affected unit.

(3) Reason you are unable to use natural gas or equivalent fuel, including the date when the natural gas curtailment was declared or the natural gas supply interruption began.

(4) Type of alternative fuel that you intend to use.

(5) Dates when the alternative fuel use is expected to begin and end.

(g) If you intend to commence or recommence combustion of solid waste, you must provide 30 days prior notice of the date upon which you will commence or recommence combustion of solid waste. The notification must identify:

(1) The name of the owner or operator of the affected source, the location of the source, the boiler(s) or process heater(s) that will commence burning solid waste, and the date of the notice.

(2) The currently applicable subcategory under this subpart.

(3) The date on which you became subject to the currently applicable emission limits.

(4) The date upon which you will commence combusting solid waste.

(h) If you intend to switch fuels, and this fuel switch may result in the applicability of a different subcategory, you must provide 30 days prior notice of the date upon which you will switch fuels. The notification must identify:

(1) The name of the owner or operator of the affected source, the location of the source, the boiler(s) that will switch fuels, and the date of the notice.

(2) The currently applicable subcategory under this subpart.

(3) The date on which you became subject to the currently applicable standards.

(4) The date upon which you will commence the fuel switch.

§ 63.7550 What reports must I submit and when?

(a) You must submit each report in Table 9 to this subpart that applies to you.

(b) Unless the EPA Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 9 to this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section. For units that are subject only to a requirement to conduct an annual, biennial, or 5-year

tune-up according to § 63.7540(a)(10), (11), or (12), respectively, and not subject to emission limits or operating limits, you may submit only an annual, biennial, or 5-year compliance report, as applicable, as specified in paragraphs (b)(1) through (5) of this section, instead of a semi-annual compliance report.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7495 and ending on June 30 or December 31, whichever date is the first date that occurs at least 180 days (or 1, 2, or 5 years, as applicable, if submitting an annual, biennial, or 5-year compliance report) after the compliance date that is specified for your source in § 63.7495.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.7495. The first annual, biennial, or 5-year compliance report must be postmarked no later than January 31.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31. Annual, biennial, and 5-year compliance reports must cover the applicable 1-, 2-, or 5-year periods from January 1 to December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period. Annual, biennial, and 5-year compliance reports must be postmarked no later than January 31.

(5) For each affected source that is subject to permitting regulations pursuant to part 70 or part 71 of this chapter, and if the delegated authority has established dates for submitting semiannual reports pursuant to § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the delegated authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information required in paragraphs (c)(1) through (13) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) The total fuel use by each affected source subject to an emission limit, for each calendar month within the semiannual (or annual, biennial, or 5-year) reporting period, including, but not limited to, a description of the fuel, whether the fuel has received a non-waste determination by EPA or your basis for concluding that the fuel is not a waste, and the total fuel usage amount with units of measure.

(5) A summary of the results of the annual performance tests for affected sources subject to an emission limit, a summary of any fuel analyses associated with performance tests, and documentation of any operating limits that were reestablished during this test, if applicable. If you are conducting performance tests once every 3 years consistent with § 63.7515(b) or (c), the date of the last 2 performance tests, a comparison of the emission level you achieved in the last 2 performance tests to the 75 percent emission limit threshold required in § 63.7515(b) or (c), and a statement as to whether there have been any operational changes since the last performance test that could increase emissions.

(6) A signed statement indicating that you burned no new types of fuel in an affected source subject to an emission limit. Or, if you did burn a new type of fuel and are subject to a hydrogen chloride emission limit, you must submit the calculation of chlorine input, using Equation 5 of § 63.7530, that demonstrates that your source is still within its maximum chlorine input level established during the previous performance testing (for sources that demonstrate compliance through performance testing) or you must submit the calculation of hydrogen chloride emission rate using Equation 11 of § 63.7530 that demonstrates that your source is still meeting the emission limit for hydrogen chloride emissions (for boilers or process heaters that demonstrate compliance through fuel analysis). If you burned a new type of fuel and are subject to a mercury emission limit, you must submit the calculation of mercury input, using Equation 8 of § 63.7530, that demonstrates that your source is still within its maximum mercury input level established during the previous performance testing (for sources that demonstrate compliance through performance testing), or you must submit the calculation of mercury emission rate using Equation 12 of § 63.7530 that demonstrates that your source is still meeting the emission limit for mercury emissions (for boilers or process heaters that demonstrate compliance through fuel analysis). If you burned a new type of fuel and are subject to a total selected metals emission limit, you must submit the calculation of total selected metals input, using Equation 9 of § 63.7530, that demonstrates that your source is still within its maximum total selected metals input level established during the previous performance testing (for sources that demonstrate compliance through performance testing), or you must submit the calculation of total selected metals emission rate, using Equation 13 of § 63.7530, that demonstrates that your source is still meeting the emission limit for total selected metals emissions (for boilers or process heaters that demonstrate compliance through fuel analysis).

(7) If you wish to burn a new type of fuel in an affected source subject to an emission limit and you cannot demonstrate compliance with the maximum chlorine input operating limit using Equation 7 of § 63.7530 or the maximum mercury input operating limit using Equation 8 of § 63.7530, or the maximum total selected metals input operating limit using Equation 9 of § 63.7530 you must include in the compliance report a statement indicating the intent to conduct a new performance test within 60 days of starting to burn the new fuel.

(8) A summary of any monthly fuel analyses conducted to demonstrate compliance according to §§ 63.7521 and 63.7530 for affected sources subject to emission limits, and any fuel specification analyses conducted according to § 63.7521(f) and § 63.7530(g).

(9) If there are no deviations from any emission limits or operating limits in this subpart that apply to you, a statement that there were no deviations from the emission limits or operating limits during the reporting period.

(10) If there were no deviations from the monitoring requirements including no periods during which the CMSs, including CEMS, COMS, and continuous parameter monitoring systems, were out of control as specified in § 63.8(c)(7), a statement that there were no deviations and no periods during which the CMS were out of control during the reporting period.

(11) If a malfunction occurred during the reporting period, the report must include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of

actions taken by you during a malfunction of a boiler, process heater, or associated air pollution control device or CMS to minimize emissions in accordance with § 63.7500(a)(3), including actions taken to correct the malfunction.

(12) Include the date of the most recent tune-up for each unit subject to only the requirement to conduct an annual, biennial, or 5-year tune-up according to § 63.7540(a)(10), (11), or (12) respectively. Include the date of the most recent burner inspection if it was not done annually, biennially, or on a 5-year period and was delayed until the next scheduled or unscheduled unit shutdown.

(13) If you plan to demonstrate compliance by emission averaging, certify the emission level achieved or the control technology employed is no less stringent than the level or control technology contained in the notification of compliance status in § 63.7545(e)(5)(i).

(14) For units subject to emission limits in Tables 1 or 2 of this subpart, for each startup or shutdown event during the reporting period, report the percentage concentration of oxygen in the firebox on an hourly basis throughout the event, the calendar date and length of each event, and the reason for each event.

(d) For each deviation from an emission limit or operating limit in this subpart that occurs at an affected source where you are not using a CMS to comply with that emission limit or operating limit, the compliance report must additionally contain the information required in paragraphs (d)(1) through (4) of this section.

(1) The total operating time of each affected source during the reporting period.

(2) A description of the deviation and which emission limit or operating limit from which you deviated.

(3) Information on the number, duration, and cause of deviations (including unknown cause), as applicable, and the corrective action taken.

(4) A copy of the test report if the annual performance test showed a deviation from the emission limits.

(e) For each deviation from an emission limit, operating limit, and monitoring requirement in this subpart occurring at an affected source where you are using a CMS to comply with that emission limit or operating limit, you must include the information required in paragraphs (e)(1) through (12) of this section. This includes any deviations from your site-specific monitoring plan as required in § 63.7505(d).

(1) The date and time that each deviation started and stopped and description of the nature of the deviation (*i.e.,* what you deviated from).

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out of control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) An analysis of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS's downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) An identification of each parameter that was monitored at the affected source for which there was a deviation.

(9) A brief description of the source for which there was a deviation.

(10) A brief description of each CMS for which there was a deviation.

(11) The date of the latest CMS certification or audit for the system for which there was a deviation.

(12) A description of any changes in CMSs, processes, or controls since the last reporting period for the source for which there was a deviation.

(f) Each affected source that has obtained a Title V operating permit pursuant to part 70 or part 71 of this chapter must report all deviations as defined in this subpart in the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 9 to this subpart along with, or as part of, the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limit, operating limit, or work practice requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the delegated authority.

(g) (Reserved)

(h) Within 60 days after the date of completing each performance test, you must transmit the results of the performance tests required by this subpart to EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through EPA's Central Data Exchange (CDX) (*http://www.epa.gov/cdx*). Performance test data must be submitted in the file format generated through use of EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods on the ERT Web site are subject to this requirement for submitting reports electronically to WebFIRE. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives) to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including the confidential business information, to the delegated authority in the format specified by the delegated authority.

(i) Within 60 days after the date of completing each CEMS (CO and Hg) performance evaluation test, as defined in § 63.2 and required by this subpart, you must submit the relative accuracy test audit data electronically into EPA's Central Data Exchange by using the Electronic Reporting Tool as described in paragraph (h) of this section. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically to EPA's CDX.

(j) Within 60 days after the reporting periods ending on March 31, June 30, September 30, and December 31, you must transmit quarterly reports to EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through EPA's Central Data Exchange (CDX) (*www.epa.gov/cdx*). For each reporting period, the quarterly reports must include all of the

calculated 30 day rolling average values based on the daily CEMS (CO and Hg) and CPMS (PM CPMS output, scrubber pH, scrubber liquid flow rate, scrubber pressure drop) data.

§ 63.7555 What records must I keep?

(a) You must keep records according to paragraphs (a)(1) and (2) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status or semiannual compliance report that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance tests, fuel analyses, or other compliance demonstrations and performance evaluations as required in § 63.10(b)(2)(viii).

(b) For each CEMS, COMS, and continuous monitoring system you must keep records according to paragraphs (b)(1) through (5) of this section.

(1) Records described in § 63.10(b)(2)(vii) through (xi).

(2) Monitoring data for continuous opacity monitoring system during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (*i.e.,* superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Request for alternatives to relative accuracy test for CEMS as required in § 63.8(f)(6)(i).

(5) Records of the date and time that each deviation started and stopped.

(c) You must keep the records required in Table 8 to this subpart including records of all monitoring data and calculated averages for applicable operating limits, such as opacity, pressure drop, pH, and operating load, to show continuous compliance with each emission limit and operating limit that applies to you.

(d) For each boiler or process heater subject to an emission limit in Table 1 or 2 to this subpart, you must also keep the applicable records in paragraphs (d)(1) through (9) of this section.

(1) You must keep records of monthly fuel use by each boiler or process heater, including the type(s) of fuel and amount(s) used.

(2) If you combust non-hazardous secondary materials that have been determined not to be solid waste pursuant to § 241.3(b)(1) and (2), you must keep a record that documents how the secondary material meets each of the legitimacy criteria. If you combust a fuel that has been processed from a discarded non-hazardous secondary material pursuant to § 241.3(b)(4), you must keep records as to how the operations that produced the fuel satisfy the definition of processing in § 241.2. If the fuel received a non-waste determination pursuant to the petition process submitted under § 241.3(c), you must keep a record that documents how the fuel satisfies the requirements of the petition process. Units exempt from the incinerator standards under section 129(g)(1) of the Clean Air Act because they are qualifying facilities burning a homogeneous waste stream do not need to maintain the records described in this paragraph (d)(2).

(3) You must keep records of monthly hours of operation by each boiler or process heater that meets the definition of limited-use boiler or process heater.

(4) A copy of all calculations and supporting documentation of maximum chlorine fuel input, using Equation 7 of § 63.7530, that were done to demonstrate continuous compliance with the hydrogen chloride emission limit, for sources that demonstrate compliance through performance testing. For sources that demonstrate compliance through fuel analysis, a copy of all calculations and supporting documentation of hydrogen chloride emission rates, using Equation 11 of § 63.7530, that were done to demonstrate compliance with the hydrogen chloride emission limit. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum chlorine fuel input or hydrogen chloride emission rates. You can use the results from one fuel analysis for multiple boilers and process heaters provided they are all burning the same fuel type. However, you must calculate chlorine fuel input, or hydrogen chloride emission rate, for each boiler and process heater.

(5) A copy of all calculations and supporting documentation of maximum mercury fuel input, using Equation 8 of § 63.7530, that were done to demonstrate continuous compliance with the mercury emission limit for sources that demonstrate compliance through performance testing. For sources that demonstrate compliance through fuel analysis, a copy of all calculations and supporting documentation of mercury emission rates, using Equation 12 of § 63.7530, that were done to demonstrate compliance with the mercury emission limit. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum mercury fuel input or mercury emission rates. You can use the results from one fuel analysis for multiple boilers and process heaters provided they are all burning the same fuel type. However, you must calculate mercury fuel input, or mercury emission rates, for each boiler and process heater.

(6) If, consistent with § 63.7515(b) and (c), you choose to stack test less frequently than annually, you must keep annual records that document that your emissions in the previous stack test(s) were less than 75 percent of the applicable emission limit (or, in specific instances noted in Tables 1 and 2 to this subpart, less than the applicable emission limit), and document that there was no change in source operations including fuel composition and operation of air pollution control equipment that would cause emissions of the relevant pollutant to increase within the past year.

(7) Records of the occurrence and duration of each malfunction of the boiler or process heater, or of the associated air pollution control and monitoring equipment.

(8) Records of actions taken during periods of malfunction to minimize emissions in accordance with the general duty to minimize emissions in § 63.7500(a)(3), including corrective actions to restore the malfunctioning boiler or process heater, air pollution control, or monitoring equipment to its normal or usual manner of operation.

(9) A copy of all calculations and supporting documentation of maximum total selected metals fuel input, using Equation 9 of § 63.7530, that were done to demonstrate continuous compliance with the total selected metals emission limit for sources that demonstrate compliance through performance testing. For sources that demonstrate compliance through fuel analysis, a copy of all calculations and supporting documentation of total selected metals emission rates, using Equation 13 of § 63.7530, that were done to demonstrate compliance with the total selected metals emission limit. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum total selected metals fuel input or total selected metals emission rates. You can use the results from one fuel analysis for multiple boilers and process heaters provided they are all burning the same fuel type. However, you must calculate total selected metals fuel input, or total selected metals emission rates, for each boiler and process heater.

(e) If you elect to average emissions consistent with § 63.7522, you must additionally keep a copy of the emission averaging implementation plan required in § 63.7522(g), all calculations required under § 63.7522, including monthly

records of heat input or steam generation, as applicable, and monitoring records consistent with § 63.7541.

(f) If you elect to use emission credits from energy conservation measures to demonstrate compliance according to § 63.7533, you must keep a copy of the Implementation Plan required in § 63.7533(d) and copies of all data and calculations used to establish credits according to § 63.7533(b), (c), and (f).

(g) If you elected to demonstrate that the unit meets the specification for mercury for the other gas 1 subcategory and you cannot submit a signed certification under § 63.7545(g) because the constituents could exceed the specification, you must maintain monthly records of the calculations and results of the fuel specification for mercury in Table 6.

(h) If you operate a unit designed to burn natural gas, refinery gas, or other gas 1 fuel that is subject to this subpart, and you use an alternative fuel other than natural gas, refinery gas, gaseous fuel subject to another subpart under this part, or other gas 1 fuel, you must keep records of the total hours per calendar year that alternative fuel is burned.

(i) For each startup or shutdown event, you must maintain records that boiler operators have completed training for startup and shutdown procedures.

§ 63.7560 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site, or they must be accessible from on site (for example, through a computer network), for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records off site for the remaining 3 years.

Other Requirements and Information

§ 63.7565 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.7570 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by EPA, or a delegated authority such as your state, local, or tribal agency. If the EPA Administrator has delegated authority to your state, local, or tribal agency, then that agency (as well as EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under 40 CFR part 63, subpart E, the authorities listed in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the state, local, or tribal agency, however, EPA retains oversight of this subpart and can take enforcement actions, as appropriate.

(1) Approval of alternatives to the non-opacity emission limits and work practice standards in § 63.7500(a) and (b) under § 63.6(g).

(2) Approval of alternative opacity emission limits in § 63.7500(a) under § 63.6(h)(9).

(3) Approval of major change to test methods in Table 5 to this subpart under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90, and alternative analytical methods requested under § 63.7521(b)(2).

(4) Approval of major change to monitoring under § 63.8(f) and as defined in § 63.90, and approval of alternative operating parameters under § 63.7500(a)(2) and § 63.7522(g)(2).

(5) Approval of major change to recordkeeping and reporting under § 63.10(e) and as defined in § 63.90.

§ 63.7575 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2 (the General Provisions), and in this section as follows:

30-day rolling average means the arithmetic mean of all valid data from 30 successive operating days that is calculated for each operating day using the data from that operating day and the previous 29 operating days.

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

Annual heat input means the heat input for the 12 months preceding the compliance demonstration.

Average annual heat input rate means annual heat input divided by the hours of operation for the 12 months preceding the compliance demonstration.

Bag leak detection system means a group of instruments that are capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.,* baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on electrodynamic, triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Benchmarking means a process of comparison against standard or average.

Biodiesel means a mono-akyl ester derived from biomass and conforming to ASTM D6751–08, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels (incorporated by reference, see § 63.14).

Biomass or bio-based solid fuel means any biomass-based solid fuel that is not a solid waste. This includes, but is not limited to, wood residue; wood products (*e.g.,* trees, tree stumps, tree limbs, bark, lumber, sawdust, sander dust, chips, scraps, slabs, millings, and shavings); animal manure, including litter and other bedding materials; vegetative agricultural and silvicultural materials, such as logging residues (slash), nut and grain hulls and chaff (*e.g.,* almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds. This definition of biomass is not intended to suggest that these materials are or are not solid waste.

Blast furnace gas fuel-fired boiler or process heater means an industrial/commercial/institutional boiler or process heater that receives 90 percent or more of its total annual gas volume from blast furnace gas.

Boiler means an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel and/or oxidizer feed rates are controlled. A device combusting solid waste, as defined in § 241.3, is not a boiler unless the device is exempt from the definition of a solid waste incineration unit as provided in section 129(g)(1) of the Clean Air Act. Waste heat boilers that use only natural gas, refinery gas, or other gas 1 fuels for supplemental fuel are excluded from this definition.

Boiler system means the boiler and associated components, such as, the feed water system, the combustion air system, the fuel system (including burners), blowdown system, combustion

control system, and energy consuming systems.

Calendar year means the period between January 1 and December 31, inclusive, for a given year.

Coal means all solid fuels classifiable as anthracite, bituminous, sub-bituminous, or lignite by ASTM D388 (incorporated by reference, see § 63.14), coal refuse, and petroleum coke. For the purposes of this subpart, this definition of ''coal'' includes synthetic fuels derived from coal for creating useful heat, including but not limited to, solvent-refined coal, coal-oil mixtures, and coal-water mixtures. Coal derived gases are excluded from this definition.

Coal refuse means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (6,000 Btu per pound) on a dry basis.

Commercial/institutional boiler means a boiler used in commercial establishments or institutional establishments such as medical centers, research centers, institutions of higher education, hotels, and laundries to provide steam and/or hot water.

Common stack means the exhaust of emissions from two or more affected units through a single flue. Affected units with a common stack may each have separate air pollution control systems located before the common stack, or may have a single air pollution control system located after the exhausts come together in a single flue.

Cost-effective energy conservation measure means a measure that is implemented to improve the energy efficiency of the boiler or facility that has a payback (return of investment) period of 2 years or less.

Daily block average means the arithmetic mean of all valid emission concentrations or parameter levels recorded when a unit is operating measured over the 24-hour period from 12 a.m. (midnight) to 12 a.m. (midnight).

Deviation. (1) Means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, or work practice standard; or

(ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

(2) A deviation is not always a violation. The determination of whether a deviation constitutes a violation of the standard is up to the discretion of the entity responsible for enforcement of the standards.

Dioxins/furans means tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

Distillate oil means fuel oils, including recycled oils, that comply with the specifications for fuel oil numbers 1 and 2, as defined by ASTM D396 (incorporated by reference, see § 63.14).

Dry scrubber means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gas in the exhaust stream forming a dry powder material. Sorbent injection systems in fluidized bed boilers and process heaters are included in this definition. A dry scrubber is a dry control system.

Dutch oven means a unit having a refractory-walled cell connected to a conventional boiler setting. Fuel materials are introduced through an opening in the roof of the dutch oven and burn in a pile on its floor. Fluidized bed boilers are not part of the dutch oven design category.

Electric utility steam generating unit means a fossil fuel-fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A fossil fuel-fired unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale is considered an electric utility steam generating unit. To be ''capable of combusting'' fossil fuels, an EGU would need to have these fuels allowed in their operating permits and have the appropriate fuel handling facilities on-site or otherwise available (*e.g.,* coal handling equipment, including coal storage area, belts and conveyers, pulverizers, *etc.;* oil storage facilities). In addition, fossil fuel-fired EGU means any EGU that fired fossil fuel for more than 10.0 percent of the average annual heat input in any 3 consecutive calendar years or for more than 15.0 percent of the annual heat input during any one calendar year after [COMPLIANCE DATE OF THE FINAL EGU RULE].

Electrostatic precipitator (ESP) means an add-on air pollution control device used to capture particulate matter by charging the particles using an electrostatic field, collecting the particles using a grounded collecting surface, and transporting the particles into a hopper. An electrostatic precipitator is usually a dry control system.

Emission credit means emission reductions above those required by this subpart. Emission credits generated may be used to comply with the emissions limits. Credits may come from pollution prevention projects that result in reduced fuel use by affected units. Shutdowns cannot be used to generate credits.

Energy assessment means the following only as this term is used in Table 3 to this subpart.

(1) Energy assessment for facilities with affected boilers and process heaters using less than 0.3 trillion Btu per year heat input will be 8 technical labor hours in length maximum, but may be longer at the discretion of the owner or operator of the affected source. The boiler system and energy use system accounting for at least 50 percent of the energy output will be evaluated to identify energy savings opportunities, within the limit of performing an 8-hour energy assessment.

(2) The Energy assessment for facilities with affected boilers and process heaters using 0.3 to 1.0 trillion Btu per year will be 24 technical labor hours in length maximum, but may be longer at the discretion of the owner or operator. The boiler system and any energy use system accounting for at least 33 percent of the energy output will be evaluated to identify energy savings opportunities, within the limit of performing a 24-hour energy assessment.

(3) In the Energy assessment for facilities with affected boilers and process heaters using greater than 1.0 trillion Btu per year, the boiler system and any energy use system accounting for at least 20 percent of the energy output will be evaluated to identify energy savings opportunities.

Energy management practices means the set of practices and procedures designed to manage energy use that are demonstrated by the facility's energy policies, a facility energy manager and other staffing responsibilities, energy performance measurement and tracking methods, an energy saving goal, action plans, operating procedures, internal reporting requirements, and periodic review intervals used at the facility.

Energy use system includes, but is not limited to, process heating; compressed air systems; machine drive (motors, pumps, fans); process cooling; facility heating, ventilation, and air-conditioning systems; hot water systems; building envelop; and lighting.

Equivalent means the following only as this term is used in Table 6 to this subpart:

(1) An equivalent sample collection procedure means a published voluntary consensus standard or practice (VCS) or EPA method that includes collection of a minimum of three composite fuel samples, with each composite consisting of a minimum of three increments collected at approximately equal intervals over the test period.

(2) An equivalent sample compositing procedure means a published VCS or EPA method to systematically mix and obtain a representative subsample (part) of the composite sample.

(3) An equivalent sample preparation procedure means a published VCS or EPA method that: Clearly states that the standard, practice or method is appropriate for the pollutant and the fuel matrix; or is cited as an appropriate sample preparation standard, practice or method for the pollutant in the chosen VCS or EPA determinative or analytical method.

(4) An equivalent procedure for determining heat content means a published VCS or EPA method to obtain gross calorific (or higher heating) value.

(5) An equivalent procedure for determining fuel moisture content means a published VCS or EPA method to obtain moisture content. If the sample analysis plan calls for determining metals (especially the mercury, selenium, or arsenic) using an aliquot of the dried sample, then the drying temperature must be modified to prevent vaporizing these metals. On the other hand, if metals analysis is done on an ''as received'' basis, a separate aliquot can be dried to determine moisture content and the metals concentration mathematically adjusted to a dry basis.

(6) An equivalent pollutant (mercury, hydrogen chloride) determinative or analytical procedure means a published VCS or EPA method that clearly states that the standard, practice, or method is appropriate for the pollutant and the fuel matrix and has a published detection limit equal or lower than the methods listed in Table 6 to this subpart for the same purpose.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse. A fabric filter is a dry control system.

Federally enforceable means all limitations and conditions that are enforceable by the EPA Administrator, including the requirements of 40 CFR parts 60 and 61, requirements within any applicable state implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

Fluidized bed boiler means a boiler utilizing a fluidized bed combustion process that is not a pulverized coal boiler.

Fluidized bed combustion means a process where a fuel is burned in a bed of granulated particles, which are maintained in a mobile suspension by the forward flow of air and combustion products.

Fuel cell means a boiler type in which the fuel is dropped onto suspended fixed grates and is fired in a pile. The refractory-lined fuel cell uses combustion air preheating and positioning of secondary and tertiary air injection ports to improve boiler efficiency. Fluidized bed, dutch oven, pile burner, hybrid suspension grate, and suspension burners are not part of the fuel cell subcategory.

Fuel type means each category of fuels that share a common name or classification. Examples include, but are not limited to, bituminous coal, sub-bituminous coal, lignite, anthracite, biomass, residual oil. Individual fuel types received from different suppliers are not considered new fuel types.

Gaseous fuel includes, but is not limited to, natural gas, process gas, landfill gas, coal derived gas, refinery gas, and biogas. Blast furnace gas is exempted from this definition.

Heat input means heat derived from combustion of fuel in a boiler or process heater and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources such as gas turbines, internal combustion engines, kilns, *etc.*

Heavy Liquid includes residual oil and any other liquid fuel not classified as a light liquid.

Hourly average means the arithmetic average of at least four CMS data values representing the four 15-minute periods in an hour, or at least two 15-minute data values during an hour when CMS calibration, quality assurance, or maintenance activities are being performed.

Hot water heater means a closed vessel with a capacity of no more than 120 U.S. gallons in which water is heated by combustion of gaseous or liquid fuel and is withdrawn for use external to the vessel at pressures not exceeding 160 psig, including the apparatus by which the heat is generated and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius). Hot water boilers (*i.e.,* not generating steam) combusting gaseous or liquid fuel with a heat input capacity of less than 1.6 million Btu per hour are included in this definition. *Hot water heater* also means a tankless unit that provides on demand hot water.

Hybrid suspension grate boiler means a boiler designed with air distributors to spread the fuel material over the entire width and depth of the boiler combustion zone. The fuel combusted in these units exceed a moisture content of 40 percent on an as-fired basis. The drying and much of the combustion of the fuel takes place in suspension, and the combustion is completed on the grate or floor of the boiler. Fluidized bed, dutch oven, and pile burner designs are not part of the hybrid suspension grate boiler design category.

Industrial boiler means a boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam and/or hot water.

Light liquid includes distillate oil, biodiesel or vegetable oil.

Limited-use boiler or process heater means any boiler or process heater that burns any amount of solid, liquid, or gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and has a federally enforceable limit of no more than 876 hours per year of operation.

Liquid fuel includes, but is not limited to, distillate oil, residual oil, on-spec used oil, biodiesel and vegetable oil.

Load fraction means the actual heat input of the boiler or process heater divided by the average operating load determined according to Table 7 to this subpart.

Metal process furnaces include natural gas-fired annealing furnaces, preheat furnaces, reheat furnaces, aging furnaces, heat treat furnaces, and homogenizing furnaces.

Million Btu (MMBtu) means one million British thermal units.

Minimum activated carbon injection rate means load fraction (percent) multiplied by the lowest hourly average activated carbon injection rate measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limits.

Minimum pressure drop means the lowest hourly average pressure drop measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limit.

Minimum scrubber effluent pH means the lowest hourly average sorbent liquid pH measured at the inlet to the wet scrubber according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable hydrogen chloride emission limit.

Minimum scrubber liquid flow rate means the lowest hourly average liquid flow rate (*e.g.,* to the PM scrubber or to the acid gas scrubber) measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limit.

Minimum scrubber pressure drop means the lowest hourly average scrubber pressure drop measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limit.

Minimum sorbent injection rate means load fraction (percent) multiplied by the lowest hourly average sorbent injection rate for each sorbent measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limits.

Minimum total secondary electric power means the lowest hourly average total secondary electric power determined from the values of secondary voltage and secondary current to the electrostatic precipitator measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limits.

Natural gas means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

(2) Liquid petroleum gas, as defined in ASTM D1835 (incorporated by reference, see § 63.14); or

(3) A mixture of hydrocarbons that maintains a gaseous state at ISO conditions. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 34 and 43 mega joules (MJ) per dry standard cubic meter (910 and 1,150 Btu per dry standard cubic foot); or

(4) Propane or propane derived synthetic natural gas. Propane means a colorless gas derived from petroleum and natural gas, with the molecular structure C_3H_8.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the boiler or process heater unit. It is not necessary for fuel to be combusted for the entire 24-hour period.

Other combustor means a unit designed to burn solid fuel that is not classified as a dutch oven, fluidized bed, fuel cell, hybrid suspension grate boiler, pulverized coal boiler, stoker, sloped grate, or suspension boiler as defined in this subpart.

Other gas 1 fuel means a gaseous fuel that is not natural gas or refinery gas and does not exceed the maximum concentration of 40 micrograms/cubic meters of mercury.

Oxygen analyzer system means all equipment required to determine the oxygen content of a gas stream and used to monitor oxygen in the boiler flue gas or firebox. This definition includes oxygen trim systems. The source owner or operator must install, calibrate, maintain, and operate the oxygen analyzer system in accordance with the manufacturer's recommendations.

Oxygen trim system means a system of monitors that is used to maintain excess air at the desired level in a combustion device. A typical system consists of a flue gas oxygen and/or carbon monoxide monitor that automatically provides a feedback signal to the combustion air controller.

Particulate matter (PM) means any finely divided solid or liquid material, other than uncombined water, as measured by the test methods specified under this subpart, or an approved alternative method.

Period of gas curtailment or supply interruption means a period of time during which the supply of gaseous fuel to an affected facility is halted for reasons beyond the control of the facility. The act of entering into a contractual agreement with a supplier of natural gas established for curtailment purposes does not constitute a reason that is under the control of a facility for the purposes of this definition. An increase in the cost or unit price of natural gas due to normal market fluctuations not during periods of supplier delivery restriction does not constitute a period of natural gas curtailment or supply interruption. On-site gaseous fuel system emergencies or equipment failures qualify as periods of supply interruption when the emergency or failure is beyond the control of the facility.

Pile burner means a boiler design incorporating a design where the anticipated biomass fuel has a high relative moisture content. Grates serve to support the fuel, and underfire air flowing up through the grates provides oxygen for combustion, cools the grates, promotes turbulence in the fuel bed, and fires the fuel. The most common form of pile burning is the dutch oven.

Process heater means an enclosed device using controlled flame, and the unit's primary purpose is to transfer heat indirectly to a process material (liquid, gas, or solid) or to a heat transfer material for use in a process unit, instead of generating steam. Process heaters include units heating hot water as a process heat transfer medium. Process heaters are devices in which the combustion gases do not come into direct contact with process materials. A device combusting solid waste, as defined in § 241.3, is not a process heater unless the device is exempt from the definition of a solid waste incineration unit as provided in section 129(g)(1) of the Clean Air Act. Process heaters do not include units used for comfort heat or space heat, food preparation for on-site consumption, or autoclaves. Waste heat process heaters that use only natural gas, refinery gas, or other gas 1 fuels for supplemental fuel are excluded from this definition.

Pulverized coal boiler means a boiler in which pulverized coal or other solid fossil fuel is introduced into an air stream that carries the coal to the combustion chamber of the boiler where it is fired in suspension.

Qualified energy assessor means:

(1) Someone who has demonstrated capabilities to evaluate energy savings opportunities for steam generation and major energy using systems, including, but not limited to:

(i) Boiler combustion management.

(ii) Boiler thermal energy recovery, including

(A) Conventional feed water economizer,

(B) Conventional combustion air preheater, and

(C) Condensing economizer.

(iii) Boiler blowdown thermal energy recovery.

(iv) Primary energy resource selection, including

(A) Fuel (primary energy source) switching, and

(B) Applied steam energy versus direct-fired energy versus electricity.

(v) Insulation issues.

(vi) Steam trap and steam leak management.

(vi) Condensate recovery.

(viii) Steam end-use management.

(2) Capabilities and knowledge includes, but is not limited to:

(i) Background, experience, and recognized abilities to perform the assessment activities, data analysis, and report preparation.

(ii) Familiarity with operating and maintenance practices for steam or process heating systems.

(iii) Additional potential steam system improvement opportunities

including improving steam turbine operations and reducing steam demand.

(iv) Additional process heating system opportunities including effective utilization of waste heat and use of proper process heating methods.

(v) Boiler-steam turbine cogeneration systems.

(vi) Industry specific steam end-use systems.

Refinery gas means any gas that is generated at a petroleum refinery and is combusted. Refinery gas includes natural gas when the natural gas is combined and combusted in any proportion with a gas generated at a refinery. Refinery gas includes gases generated from other facilities when that gas is combined and combusted in any proportion with gas generated at a refinery.

Residential boiler means a boiler used in a dwelling containing four or fewer family units to provide heat and/or hot water. This definition includes boilers used primarily to provide heat and/or hot water for a dwelling containing four or fewer families located at an institutional facility (*e.g.,* university campus, military base, church grounds) or commercial/industrial facility (*e.g.,* farm).

Residual oil means crude oil, and all fuel oil numbers 4, 5 and 6, as defined in ASTM D396–10 (incorporated by reference, see § 63.14(b)).

Responsible official means responsible official as defined in § 70.2.

Shutdown means the period that begins when a unit last operates at 25 percent load and ending with a state of no fuel combustion in the unit.

Sloped grate means a unit where the solid fuel is fed to the top of the grate from where it slides downwards; while sliding the fuel first dries and then ignites and burns. The ash is deposited at the bottom of the grate. Fluidized bed, dutch oven, pile burner, hybrid suspension grate, suspension burners, and fuel cells are not considered to be a sloped grate design.

Solid fossil fuel includes, but is not limited to, coal, coke, petroleum coke, and tire derived fuel.

Solid fuel means any solid fossil fuel or biomass or bio-based solid fuel.

Startup means the period between the state of no combustion in the unit to the period where the unit first achieves 25 percent load (*i.e.,* a cold start).

Steam output means:

(1) For a boiler that produces steam for process or heating only (no power generation), the energy content in terms of MMBtu of the boiler steam output;

(2) For a boiler that cogenerates process steam and electricity (also known as combined heat and power), the total energy output, which is the sum of the energy content of the steam exiting the turbine and sent to process in MMBtu and the energy of the electricity generated converted to MMBtu at a rate of 10,000 Btu per kilowatt-hour generated (10 MMBtu per megawatt-hour) and

(3) For a boiler that generates only electricity, the alternate output-based emission limits would be calculated using Equations 16 through 20 of this section, as appropriate:

(i) For emission limits for boilers in the solid fuel subcategory use Equation 16 of this section:

$$EL_{OBE} = EL_T \times 12.7 \text{ MMBtu/Mwh} \quad \text{(Eq. 16)}$$

Where:

EL_{OBE} = Emission limit in units of pounds per megawatt-hour.

EL_T = Appropriate emission limit from Table 1 or 2 of this subpart in units of pounds per million Btu heat input.

(ii) For PM and CO emission limits for boilers in one of the subcategories of units designed to burn coal use Equation 17 of this section:

$$EL_{OBE} = EL_T \times 12.2 \text{ MMBtu/Mwh} \quad \text{(Eq. 17)}$$

Where:

EL_{OBE} = Emission limit in units of pounds per megawatt-hour.

EL_T = Appropriate emission limit from Table 1 or 2 of this subpart in units of pounds per million Btu heat input.

(iii) For PM and CO emission limits for boilers in one of the subcategories of units designed to burn biomass use Equation 18 of this section:

$$EL_{OBE} = EL_T \times 13.9 \text{ MMBtu/Mwh} \quad \text{(Eq. 18)}$$

Where:

EL_{OBE} = Emission limit in units of pounds per megawatt-hour.

EL_T = Appropriate emission limit from Table 1 or 2 of this subpart in units of pounds per million Btu heat input.

(iv) For emission limits for boilers in the one of the subcategories of units designed to burn liquid fuels use Equation 19 of this section:

$$EL_{OBE} = EL_T \times 13.8 \text{ MMBtu/Mwh} \quad \text{(Eq. 19)}$$

Where:

ELOBE = Emission limit in units of pounds per megawatt-hour.

ELT = Appropriate emission limit from Table 1 or 2 of this subpart in units of pounds per million Btu heat input.

(v) For emission limits for boilers in the Gas 2 subcategory use Equation 20 of this section:

$$EL_{OBE} = EL_T \times 10.4 \text{ MMBtu/Mwh} \quad \text{(Eq. 20)}$$

Where:

EL_{OBE} = Emission limit in units of pounds per megawatt-hour.

EL_T = Appropriate emission limit from Table 1 or 2 of this subpart in units of pounds per million Btu heat input.

Stoker means a unit consisting of a mechanically operated fuel feeding mechanism, a stationary or moving grate to support the burning of fuel and admit under-grate air to the fuel, an overfire air system to complete combustion, and an ash discharge system. This definition of stoker includes air swept stokers. There are two general types of stokers: underfeed and overfeed. Overfeed stokers include mass feed and spreader stokers. Fluidized bed, dutch oven, pile burner, hybrid suspension grate, suspension burners, and fuel cells are not considered to be a stoker design.

Stoker/sloped grate/other unit designed to burn kiln dried biomass means the unit is in the units designed to burn biomass/bio-based solid subcategory that is either a stoker, sloped grate, or other combustor design and is not in the stoker/sloped grate/other units designed to burn wet biomass subcategory.

Stoker/sloped grate/other unit designed to burn wet biomass means the unit is in the units designed to burn biomass/bio-based solid subcategory that is either a stoker, sloped grate, or other combustor design and any of the biomass/bio-based solid fuel combusted in the unit exceeds 20 percent moisture.

Suspension burner means a unit designed to feed the fuel by means of fuel distributors. The distributors inject air at the point where the fuel is introduced into the boiler in order to spread the fuel material over the boiler width. The drying (and much of the combustion) occurs while the material is suspended in air. The combustion of the fuel material is completed on a grate or floor below. Suspension boilers almost universally are designed to have high heat release rates to dry quickly the wet fuel as it is blown into the boilers. Fluidized bed, dutch oven, pile burner, and hybrid suspension grate units are not part of the suspension burner subcategory.

Temporary boiler means any gaseous or liquid fuel boiler that is designed to, and is capable of, being carried or moved from one location to another by means of, for example, wheels, skids, carrying handles, dollies, trailers, or platforms. A boiler is not a temporary boiler if any one of the following conditions exists:

(1) The equipment is attached to a foundation.

(2) The boiler or a replacement remains at a location for more than 12 consecutive months. Any temporary boiler that replaces a temporary boiler at a location and performs the same or similar function will be included in calculating the consecutive time period.

(3) The equipment is located at a seasonal facility and operates during the full annual operating period of the seasonal facility, remains at the facility for at least 2 years, and operates at that facility for at least 3 months each year.

(4) The equipment is moved from one location to another in an attempt to circumvent the residence time requirements of this definition.

Total selected metals means the combination of the following metallic hazardous air pollutants: arsenic, beryllium, cadmium, chromium, lead, manganese, nickel and selenium.

Tune-up means adjustments made to a boiler in accordance with procedures supplied by the manufacturer (or an approved specialist) to optimize the combustion efficiency.

Unit designed to burn biomass/bio-based solid subcategory includes any boiler or process heater that burns at least 10 percent biomass or bio-based solids on an annual heat input basis in combination with solid fossil fuels, liquid fuels, or gaseous fuels.

Unit designed to burn coal/solid fossil fuel subcategory includes any boiler or process heater that burns any coal or other solid fossil fuel alone or at least 10 percent coal or other solid fossil fuel on an annual heat input basis in combination with liquid fuels, gaseous fuels, or less than 10 percent biomass and bio-based solids on an annual heat input basis.

Unit designed to burn gas 1 subcategory includes any boiler or process heater that burns only natural gas, refinery gas, and/or other gas 1 fuels; with the exception of liquid fuels burned for periodic testing not to exceed a combined total of 48 hours during any calendar year, or during periods of gas curtailment and gas supply emergencies.

Unit designed to burn gas 2 (other) subcategory includes any boiler or process heater that is not in the unit designed to burn gas 1 subcategory and burns any gaseous fuels either alone or in combination with less than 10 percent coal/solid fossil fuel, less than 10 percent biomass/bio-based solid fuel, and less than 10 percent liquid fuels on an annual heat input basis.

Unit designed to burn heavy liquid subcategory means a unit in the unit designed to burn liquid subcategory where at least 10 percent of the heat input from liquid fuels on an annual heat input basis comes from heavy liquids.

Unit designed to burn light liquid subcategory means a unit in the unit designed to burn liquid subcategory that is not part of the unit designed to burn heavy liquid subcategory.

Unit designed to burn liquid subcategory includes any boiler or process heater that burns any liquid fuel, but less than 10 percent coal/solid fossil fuel and less than 10 percent biomass/bio-based solid fuel on an annual heat input basis, either alone or in combination with gaseous fuels. Gaseous fuel boilers and process heaters that burn liquid fuel for periodic testing of liquid fuel, maintenance, or operator training, not to exceed a combined total of 48 hours during any calendar year or during periods of maintenance, operator training, or testing of liquid fuel, not to exceed a combined total of 48 hours during any calendar year are not included in this definition. Gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment or gas supply emergencies of any duration are also not included in this definition.

Unit designed to burn liquid fuel that is a non-continental unit means an industrial, commercial, or institutional boiler or process heater designed to burn liquid fuel located in the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

Unit designed to burn solid fuel subcategory means any boiler or process heater that burns only solid fuels or at least 10 percent solid fuel on an annual heat input basis in combination with liquid fuels or gaseous fuels.

Vegetable oil means oils extracted from vegetation.

Voluntary Consensus Standards or VCS mean technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. EPA/Office of Air Quality Planning and Standards, by precedent, has only used VCS that are written in English. Examples of VCS bodies are: American Society of Testing and Materials (ASTM 100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428–B2959, (800) 262–1373, *http://www.astm.org*), American Society of Mechanical Engineers (ASME ASME, Three Park Avenue, New York, NY 10016–5990, (800) 843–2763, *http://www.asme.org*), International Standards Organization (ISO 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland, +41 22 749 01 11, *http://www.iso.org/iso/home.htm*), Standards Australia (AS Level 10, The

Exchange Centre, 20 Bridge Street, Sydney, GPO Box 476, Sydney NSW 2001, + 61 2 9237 6171 *http://www.stadards.org.au*), British Standards Institution (BSI, 389 Chiswick High Road, London, W4 4AL, United Kingdom, +44 (0)20 8996 9001, *http://www.bsigroup.com*), Canadian Standards Association (CSA 5060 Spectrum Way, Suite 100, Mississauga, Ontario L4W 5N6, Canada, (800) 463–6727, *http://www.csa.ca*), European Committee for Standardization (CEN CENELEC Management Centre Avenue Marnix 17 B–1000 Brussels, Belgium +32 2 550 08 11, *http://www.cen.eu/cen*), and German Engineering Standards (VDI VDI Guidelines Department, P.O. Box 10 11 39 40002, Duesseldorf, Germany, +49 211 6214–230, *http://www.vdi.eu*). The types of standards that are not considered VCS are standards developed by: the United States, *e.g.,* California (CARB) and Texas (TCEQ); industry groups, such as American Petroleum Institute (API), Gas Processors Association (GPA), and Gas Research Institute (GRI); and other branches of the U.S. government, *e.g.,* Department of Defense (DOD) and Department of Transportation (DOT). This does not preclude EPA from using standards developed by groups that are not VCS bodies within their rule. When this occurs, EPA has done searches and reviews for VCS equivalent to these non-EPA methods.

Waste heat boiler means a device that recovers normally unused energy and converts it to usable heat. Waste heat boilers are also referred to as heat recovery steam generators. This definition includes both fired and unfired waste heat boilers.

Waste heat process heater means an enclosed device that recovers normally unused energy and converts it to usable heat. Waste heat process heaters are also referred to as recuperative process heaters. This definition includes both fired and unfired waste heat process heaters.

Wet scrubber means any add-on air pollution control device that mixes an aqueous stream or slurry with the exhaust gases from a boiler or process heater to control emissions of particulate matter or to absorb and neutralize acid gases, such as hydrogen chloride. A wet scrubber creates an aqueous stream or slurry as a byproduct of the emissions control process.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Tables to Subpart DDDDD of Part 63

As stated in § 63.7500, you must comply with the following applicable emission limits:

TABLE 1 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	Or the emissions must not exceed the following alternative output-based limits . . .	Using this specified sampling volume or test run duration . . .
1. Units in all subcategories designed to burn solid fuel.	a. Hydrogen Chloride	0.022 lb per MMBtu of heat input.	0.025 lb per MMBtu of steam output or 0.28 lb per MWh.	For M26A, collect a minimum of 1 dscm per run; for M26 collect a minimum of 120 liters per run
	b. Mercury	8.60E–07 lb per MMBtu of heat input.	9.4E–07 lb per MMBtu of steam output or 1.1 E–05 lb per MWh.	For M29, collect a minimum of 4 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 [b] collect a minimum of 4 dscm.
2. Pulverized coal boilers designed to burn coal/solid fossil fuel.	a. Carbon monoxide (CO) (or CEMS).	9 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (28 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.0074 lb per MMBtu of steam output or 0.092 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 20 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.0013 lb per MMBtu of heat input; or (2.8E–05 [a] lb per MMBtu of heat input).	0.0013 lb per MMBtu of steam output or 0.016 lb per MWh; or (2.8E–05 [a] lb per MMBtu of steam output or 3.5E–04 [a] lb per MWh).	Collect a minimum of 3 dscm per run.
3. Stokers designed to burn coal/solid fossil fuel.	a. CO (or CEMS)	19 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (34 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.017 lb per MMBtu of steam output or 0.20 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 30 ppmv for Method 10.

TABLE 1 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS—Continued

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	Or the emissions must not exceed the following alternative output-based limits . . .	Using this specified sampling volume or test run duration . . .
	b. Filterable Particulate Matter (or Total Selected Metals).	0.028 lb per MMBtu of heat input; or (2.2E–05 [a] lb per MMBtu of heat input).	0.028 lb per MMBtu of steam output or 0.35 lb per MWh; or (3.0E–05 [a] lb per MMBtu of steam output or 2.7E–04 [a] lb per MWh).	Collect a minimum of 2 dscm per run.
4. Fluidized bed units designed to burn coal/solid fossil fuel.	a. CO (or CEMS)	17 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (59 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.015 lb per MMBtu of steam output or 0.18 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 40 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.0011 lb per MMBtu of heat input; or (1.7E–05 [a] lb per MMBtu of heat input).	0.0012 lb per MMBtu of steam output or 0.014 lb per MWh; or (1.8E–05 [a] lb per MMBtu of steam output or 2.1E–04 [a] lb per MWh).	Collect a minimum of 4 dscm per run.
5. Stokers/sloped grate/others designed to burn wet biomass fuel.	a. CO (or CEMS)	590 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (410 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.56 lb per MMBtu of steam output or 6.5 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 600 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.029 lb per MMBtu of heat input; or (2.6E–05 lb per MMBtu of heat input).	0.034 lb per MMBtu of steam output or 0.41 lb per MWh; or (2.7E–05 lb per MMBtu of steam output or 3.7E–04 lb per MWh).	Collect a minimum of 2 dscm per run.
6. Stokers/sloped grate/others designed to burn kiln-dried biomass fuel.	a. CO	250 ppm by volume on a dry basis corrected to 3 percent oxygen.	0.23 lb per MMBtu of steam output or 2.8 lb per MWh.	1 hr minimum sampling time, use a span value of 400 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.32 lb per MMBtu of heat input; or (4.0E–03 lb per MMBtu of heat input).	0.37 lb per MMBtu of steam output or 4.5 lb per MWh; or (4.2E–03 lb per MMBtu of steam output or 0.056 lb per MWh).	Collect a minimum of 2 dscm per run.
7. Fluidized bed units designed to burn biomass/bio-based solids.	a. CO (or CEMS)	230 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (180 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.22 lb per MMBtu of steam output or 2.6 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 400 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.0098 lb per MMBtu of heat input; or (4.2E–05 [a] lb per MMBtu of heat input).	0.012 lb per MMBtu of steam output or 0.14 lb per MWh; or (5.4E–05 [a] lb per MMBtu of steam output or 5.9E–04 [a] lb per MWh).	Collect a minimum of 3 dscm per run.

TABLE 1 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS—Continued

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	Or the emissions must not exceed the following alternative output-based limits . . .	Using this specified sampling volume or test run duration . . .
8. Suspension burners designed to burn biomass/bio-based solids.	a. CO (or CEMS)	58 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (1,400 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.046 lb per MMBtu of steam output or 0.64 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 100 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.051 lb per MMBtu of heat input; or (1.1E–03 lb per MMBtu of heat input).	0.052 lb per MMBtu of steam output or 0.71 lb per MWh; or (0.0012 lb per MMBtu of steam output or 0.016 lb per MWh).	Collect a minimum of 1 dscm per run.
9. Dutch Ovens/Pile burners designed to burn biomass/bio-based solids.	a. CO (or CEMS)	810 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (440 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.89 lb per MMBtu of steam output or 8.9 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 1000 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.036 lb per MMBtu of heat input; or (4.1E–05 lb per MMBtu of heat input).	0.050 lb per MMBtu of steam output or 0.51 lb per MWh; or (5.5E–05 lb per MMBtu of steam output or 5.8E–04 lb per MWh).	Collect a minimum of 1 dscm per run.
10. Fuel cell units designed to burn biomass/bio-based solids.	a. CO	210 ppm by volume on a dry basis corrected to 3 percent oxygen.	0.29 lb per MMBtu of steam output or 2.3 lb per MWh.	1 hr minimum sampling time, use a span value of 500 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.011 lb per MMBtu of heat input; or (4.9E–05 [a] lb per MMBtu of heat input).	0.030 lb per MMBtu of steam output or 0.16 lb per MWh; or (8.6E–05 [a] lb per MMBtu of steam output or 6.9E–04 [a] lb per MWh).	Collect a minimum of 1 dscm per run.
11. Hybrid suspension grate boiler designed to burn biomass/bio-based solids.	a. CO (or CEMS)	1,500 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (730 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	1.80 lb per MMBtu of steam output or 17 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 3000 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.026 lb per MMBtu of heat input; or (4.9E–04 [a] lb per MMBtu of heat input).	0.033 lb per MMBtu of steam output or 0.37 lb per MWh; or (6.2E–04 [a] lb per MMBtu of steam output or 6.9E–03 [a] lb per MWh).	Collect a minimum of 3 dscm per run.
12. Units designed to burn liquid fuel.	a. Hydrogen Chloride	0.0012 lb per MMBtu of heat input.	0.0013 lb per MMBtu of steam output or 0.017 lb per MWh.	For M26A: Collect a minimum of 1 dscm per run; for M26, collect a minimum of 120 liters per run.
	b. Mercury	4.9E–07 [a] lb per MMBtu of heat input.	5.4E–07 [a] lb per MMBtu of steam output or 6.8E–06 [a] lb per MWh.	For M29, collect a minimum of 4 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 [b] collect a minimum of 4 dscm.

TABLE 1 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS—Continued

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	Or the emissions must not exceed the following alternative output-based limits . . .	Using this specified sampling volume or test run duration . . .
13. Units designed to burn heavy liquid fuel.	a. CO (or CEMS)	10 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (18 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.0091 lb per MMBtu of steam output or 0.11 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 30 ppmv for Method 10.
	b. Filterable Particulate Matter.	0.013 lb per MMBtu of heat input.	0.015 lb per MMBtu of steam output or 0.18 lb per MWh.	Collect a minimum of 2 dscm per run.
14. Units designed to burn light liquid fuel.	a. CO (or CEMS)	3 ppm by volume on a dry basis corrected to 3 percent oxygen; or (60 ppm by volume on a dry basis corrected to 3 percent oxygen, 1-day block average).	0.0031 lb per MMBtu of steam output or 0.033 lb per MWh.	1 hr minimum sampling time, use a span value of 10 ppmv for Method 10.
	b. Filterable Particulate Matter.	0.0011 [a] lb per MMBtu of heat input for light liquid.	0.0015 [a] lb per MMBtu of steam output or 0.016 lb per MWh.	Collect a minimum of 3 dscm per run.
15. Units designed to burn liquid fuel located in non-continental states and territories.	a. CO	18 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average based on stack test (91 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-hour rolling average based on CEM).	0.017 lb per MMBtu of steam output or 0.20 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 40 ppmv for Method 10.
	b. Filterable Particulate Matter.	0.0080 lb per MMBtu of heat input.	0.0087 lb per MMBtu of steam output or 0.11 lb per MWh.	Collect a minimum of 4 dscm per run.
16. Units designed to burn gas 2 (other) gases.	a. CO	4 ppm by volume on a dry basis corrected to 3 percent oxygen.	0.005 lb per MMBtu of steam output or 0.031 lb per MWh.	1 hr minimum sampling time, use a span value of 10 ppmv for Method 10.
	b. Hydrogen Chloride	0.0017 lb per MMBtu of heat input.	0.0029 lb per MMBtu of steam output or 0.018 lb per MWh.	For M26A, Collect a minimum of 1 dscm per run; for M26, collect a minimum of 120 liters per run.
	c. Mercury	7.9E–06 lb per MMBtu of heat input.	1.4E–05 lb per MMBtu of steam output or 8.3E–05 lb per MWh.	For M29, collect a minimum of 3 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 [b] collect a minimum of 3 dscm.
	d. Filterable Particulate Matter (or Total Selected Metals).	0.0067 lb per MMBtu of heat input; or (2.4E–04 lb per MMBtu of heat input).	0.012 lb per MMBtu of steam output or 0.070 lb per MWh; or (4.0E–04 lb per MMBtu of steam output or 0.0025 lb per MWh).	Collect a minimum of 1 dscm per run.

[a] If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to § 63.7515 if all of the other provision of § 63.7515 are met. For all other pollutants that do not contain a footnote ''a'', your performance tests for this pollutant for at least 2 consecutive years must show that your emissions are at or 75 percent of this limit in order to qualify for skip testing.

[b] Incorporated by reference, see § 63.14.

As stated in § 63.7500, you must comply with the following applicable emission limits:

TABLE 2—TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR EXISTING BOILERS AND PROCESS HEATERS

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	The emissions must not exceed the following alternative output-based limits . . .	Using this specified sampling volume or test run duration . . .
1. Units in all subcategories designed to burn solid fuel.	a. Hydrogen Chloride	0.022 lb per MMBtu of heat input.	0.025 lb per MMBtu of steam output or 0.28 lb per MWh.	For M26A, Collect a minimum of 1 dscm per run; for M26, collect a minimum of 120 liters per run.
	b. Mercury	3.1E–06 lb per MMBtu of heat input.	3.5E–06 lb per MMBtu of steam output or 4.0E–05 lb per MWh.	For M29, collect a minimum of 3 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 [b] collect a minimum of 3 dscm.
2. Pulverized coal boilers designed to burn coal/solid fossil fuel.	a. CO (or CEMS)	41 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (28 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.035 lb per MMBtu of steam output or 0.42 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 100 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.044 lb per MMBtu of heat input; or (5.9E–05 lb per MMBtu of heat input).	0.045 lb per MMBtu of steam output or 0.54 lb per MWh; or (6.0E–05 lb per MMBtu of steam output or 7.3E–04 lb per MWh).	Collect a minimum of 1 dscm per run.
3. Stokers designed to burn coal/solid fossil fuel.	a. CO (or CEMS)	220 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (34 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.20 lb per MMBtu of steam output or 2.3 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 400 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.028 lb per MMBtu of heat input; or (8.3E–05 lb per MMBtu of heat input).	0.030 lb per MMBtu of steam output or 0.35 lb per MWh; or (8.8E–05 lb per MMBtu of steam output or 0.0011 lb per MWh).	Collect a minimum of 2 dscm per run.
4. Fluidized bed units designed to burn coal/solid fossil fuel.	a. CO (or CEMS)	56 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (59 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.049 lb per MMBtu of steam output or 0.57 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 100 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.088 lb per MMBtu of heat input; or (1.7E–05 lb per MMBtu of heat input).	0.092 lb per MMBtu of steam output or 1.1 lb per MWh; or (1.8E–05 lb per MMBtu of steam output or 2.1E–04 lb per MWh).	Collect a minimum of 1 dscm per run.

TABLE 2—TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR EXISTING BOILERS AND PROCESS HEATERS—Continued

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	The emissions must not exceed the following alternative output-based limits . . .	Using this specified sampling volume or test run duration . . .
5. Stokers/sloped grate/others designed to burn wet biomass fuel.	a. CO (or CEMS)	790 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (410 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.72 lb per MMBtu of steam output or 8.7 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 1000 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.029 lb per MMBtu of heat input; or (5.7E–05 lb per MMBtu of heat input).	0.034 lb per MMBtu of steam output or 0.41 lb per MWh; or (6.6E–05 lb per MMBtu of steam output or 8.0E–04 lb per MWh).	Collect a minimum of 2 dscm per run.
6. Stokers/sloped grate/others designed to burn kiln-dried biomass fuel.	a. CO	250 ppm by volume on a dry basis corrected to 3 percent oxygen.	0.23 lb per MMBtu of steam output or 2.8 lb per MWh.	1 hr minimum sampling time, use a span value of 500 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.32 lb per MMBtu of heat input; or (4.0E–03 lb per MMBtu of heat input).	0.37 lb per MMBtu of steam output or 4.5 lb per MWh; or (0.0046 lb per MMBtu of steam output or 0.056 lb per MWh).	Collect a minimum of 1 dscm per run.
7. Fluidized bed units designed to burn biomass/bio-based solid.	a. CO (or CEMS)	370 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (180 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.36 lb per MMBtu of steam output or 4.1 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 500 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.11 lb per MMBtu of heat input; or (0.0012 lb per MMBtu of heat input).	0.14 lb per MMBtu of steam output or 1.6 lb per MWh; or (0.0015 lb per MMBtu of steam output or 0.017 lb per MWh).	Collect a minimum of 1 dscm per run.
8. Suspension burners designed to burn biomass/bio-based solid.	a. CO (or CEMS)	58 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (1,400 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.046 lb per MMBtu of steam output or 0.64 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 100ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.051 lb per MMBtu of heat input; or (0.0011 lb per MMBtu of heat input).	0.052 lb per MMBtu of steam output or 0.71 lb per MWh; or (0.0012 lb per MMBtu of steam output or 0.016 lb per MWh).	Collect a minimum of 1 dscm per run.
9. Dutch Ovens/Pile burners designed to burn biomass/bio-based solid.	a. CO (or CEMS)	810 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (440 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.89 lb per MMBtu of steam output or 8.9 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 1000 ppmv for Method 10.

TABLE 2—TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR EXISTING BOILERS AND PROCESS HEATERS—Continued

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	The emissions must not exceed the following alternative output-based limits . . .	Using this specified sampling volume or test run duration . . .
	b. Filterable Particulate Matter (or Total Selected Metals).	0.036 lb per MMBtu of heat input; or (2.4E–04 lb per MMBtu of heat input).	0.050 lb per MMBtu of steam output or 0.51 lb per MWh; or (3.4E–04 lb per MMBtu of steam output or 0.0034 lb per MWh).	Collect a minimum of 1 dscm per run.
10. Fuel cell units designed to burn biomass/bio-based solid.	a. CO	1,500 ppm by volume on a dry basis corrected to 3 percent oxygen.	3.2 lb per MMBtu of steam output or 17 lb per MWh.	1 hr minimum sampling time, use a span value of 2000 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.033 lb per MMBtu of heat input; or (4.9E–05 lb per MMBtu of heat input).	0.090 lb per MMBtu of steam output or 0.46 lb per MWh; or (1.4E–04 lb per MMBtu of steam output or 6.9E–04 lb per MWh).	Collect a minimum of 1 dscm per run.
11. Hybrid suspension grate units designed to burn biomass/bio-based solid.	a. CO (or CEMS)	3,900 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (730 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	3.9 lb per MMBtu of steam output or 43 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 5000 ppmv for Method 10.
	b. Filterable Particulate Matter (or Total Selected Metals).	0.44 lb per MMBtu of heat input; or (4.9E–04[a] lb per MMBtu of heat input).	0.55 lb per MMBtu of steam output or 6.2 lb per MWh; or (6.2E–04[a] lb per MMBtu of steam output or 6.9E–03[a] lb per MWh).	Collect a minimum of 1 dscm per run.
12. Units designed to burn liquid fuel.	a. Hydrogen Chloride	0.0012 lb per MMBtu of heat input.	0.0015 lb per MMBtu of steam output or 0.017 lb per MWh.	For M26A, collect a minimum of 1 dscm per run; for M26, collect a minimum of 120 liters per run.
	b. Mercury	2.6E–05 lb per MMBtu of heat input.	3.3E–05 lb per MMBtu of steam output or 3.6E–04 lb per MWh.	For M29, collect a minimum of 2 dscm per run; for M30A or M30B collect a minimum sample as specified in the method, for ASTM D6784[b] collect a minimum of 2 dscm.
13. Units designed to burn heavy liquid fuel.	a. CO (or CEMS)	10 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (18 ppm by volume on a dry basis corrected to 3 percent oxygen, 10-day rolling average).	0.0091 lb per MMBtu of steam output or 0.11 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 20 ppmv for Method 10.
	b. Filterable Particulate Matter.	0.062 lb per MMBtu of heat input.	0.075 lb per MMBtu of steam output or 0.86 lb per MWh.	Collect a minimum of 1 dscm per run.
14. Units designed to burn light liquid fuel.	a. CO (or CEMS)	7 ppm by volume on a dry basis corrected to 3 percent oxygen; or (60 ppm by volume on a dry basis corrected to 3 percent oxygen, 1-day block average).	0.0071 lb per MMBtu of steam output or 0.076 lb per MWh.	1 hr minimum sampling time, use a span value of 10 ppmv for Method 10.
	b. Filterable Particulate Matter.	0.0034 lb per MMBtu of heat input.	0.0045 lb per MMBtu of steam output or 0.047 lb per MWh.	Collect a minimum of 3 dscm per run.

TABLE 2—TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR EXISTING BOILERS AND PROCESS HEATERS—Continued

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	The emissions must not exceed the following alternative output-based limits . . .	Using this specified sampling volume or test run duration . . .
15. Units designed to burn liquid fuel located in noncontinental states and territories.	a. CO (or CEMS)	18 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average based on stack test (91 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-hour rolling average based on CEM).	0.017 lb per MMBtu of steam output or 0.20 lb per MWh; 3-run average.	1 hr minimum sampling time, use a span value of 40 ppmv for Method 10.
	b. Filterable Particulate Matter.	0.0080 lb per MMBtu of heat input.	0.0097 lb per MMBtu of steam output or 0.11 lb per MWh.	Collect a minimum of 2 dscm per run.
16. Units designed to burn gas 2 (other) gases.	a. CO	4 ppm by volume on a dry basis corrected to 3 percent oxygen.	0.0050 lb per MMBtu of steam output or 0.031 lb per MWh.	1 hr minimum sampling time, use a span value of 10 ppmv for Method 10.
	b. Hydrogen Chloride	0.0017 lb per MMBtu of heat input.	0.0029 lb per MMBtu of steam output or 0.018 lb per MWh.	For M26A, collect a minimum of 1 dscm per run; for M26, collect a minimum of 120 liters per run.
	c. Mercury	7.9E–06 lb per MMBtu of heat input.	1.4E–05 lb per MMBtu of steam output or 8.3E–05 lb per MWh.	For M29, collect a minimum of 2 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 [b] collect a minimum of 2 dscm.
	d. Filterable Particulate Matter (or Total Selected Metals).	0.0067 lb per MMBtu of heat input or (2.4E–04 lb per MMBtu of heat input).	0.012 lb per MMBtu of steam output or 0.070 lb per MWh; or (4.0E–04 lb per MMBtu of steam output or 0.0025 lb per MWh).	Collect a minimum of 1 dscm per run.

[a] If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to § 63.7515 if all of the other provisions of § 63.7515 are met. For all other pollutants that do not contain a footnote a, your performance tests for this pollutant for at least 2 consecutive years must show that your emissions are at or 75 percent of this limit in order to qualify for skip testing.

[b] Incorporated by reference, see § 63.14.

As stated in § 63.7500, you must comply with the following applicable work practice standards:

TABLE 3—TO SUBPART DDDDD OF PART 63—WORK PRACTICE STANDARDS

If your unit is . . .	You must meet the following . . .
1. A new or existing boiler or process heater with heat input capacity of less than 5 million Btu per hour in any of the following subcategories: unit designed to burn natural gas, refinery gas or other gas 1 fuels; unit designed to burn gas 2 (other); or unit designed to burn light liquid.	Conduct a tune-up of the boiler or process heater every 5 years as specified in § 63.7540.
2. A limited use boiler or process heater; or a new or existing boiler or process heater with heat input capacity of less than 10 million Btu per hour in the unit designed to burn heavy liquid or unit designed to burn solid fuel subcategories; or a new or existing boiler or process heater with heat input capacity of less than 10 million Btu per hour, but equal to or greater than 5 million Btu per hour, in any of the following subcategories: unit designed to burn natural gas, refinery gas or other gas 1 fuels; unit designed to burn gas 2 (other); or unit designed to burn light liquid.	Conduct a tune-up of the boiler or process heater biennially as specified in § 63.7540.

TABLE 3—TO SUBPART DDDDD OF PART 63—WORK PRACTICE STANDARDS—Continued

If your unit is . . .	You must meet the following . . .
3. A new or existing boiler or process heater with heat input capacity of 10 million Btu per hour or greater.	Conduct a tune-up of the boiler or process heater annually as specified in § 63.7540. Units in either the Gas 1 or Metal Process Furnace subcategories will conduct this tune-up as a work practice for all regulated emissions under this subpart. Units in all other subcategories will conduct this tune-up as a work practice for dioxins/furans.
4. An existing boiler or process heater located at a major source facility	Must have a one-time energy assessment performed on the major source facility by qualified energy assessor. An energy assessment completed on or after January 1, 2008, that meets or is amended to meet the energy assessment requirements in this table, satisfies the energy assessment requirement. The energy assessment must include: a. A visual inspection of the boiler or process heater system. b. An evaluation of operating characteristics of the facility, specifications of energy using systems, operating and maintenance procedures, and unusual operating constraints. c. An inventory of major systems consuming energy from affected boilers and process heaters and which are under the control of the boiler/process heater owner/operator. d. A review of available architectural and engineering plans, facility operation and maintenance procedures and logs, and fuel usage. e. A review of the facility's energy management practices and provide recommendations for improvements consistent with the definition of energy management practices. f. A list of major energy conservation measures. g. A list of the energy savings potential of the energy conservation measures identified. h. A comprehensive report detailing the ways to improve efficiency, the cost of specific improvements, benefits, and the time frame for recouping those investments.
5. An existing or new unit subject to emission limits in Tables 1 or 2 to this subpart.	You must employ good combustion practices and demonstrate that good combustion practices are maintained by monitoring O_2 concentrations and optimizing those concentrations as specified by the boiler manufacturer; you must ensure that boiler operators are trained in startup and shutdown procedures, including maintenance and cleaning, safety, control device startup, and procedures to minimize emissions; and you must maintain records during periods of startup and shutdown and include in your compliance reports the O_2 conditions/data for each event, length of startup/shutdown and reason for the startup/shutdown (*i.e.,* normal/routine, problem/malfunction, outage).

As stated in § 63.7500, you must comply with the applicable operating limits:

TABLE 4—TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS

If you demonstrate compliance using . . .	You must meet these operating limits . . .
1. Wet PM scrubber control on a boiler not using a PM CPMS.	Maintain the 30-day rolling average pressure drop and the 30-day rolling average liquid flow rate at or above the lowest one-hour average pressure drop and the lowest one-hour average liquid flow rate, respectively, measured during the most recent performance test demonstrating compliance with the PM emission limitation according to § 63.7530(b) and Table 7 to this subpart.
2. Wet acid gas (HCl) scrubber control on a boiler not using a hydrogen chloride CEMS.	Maintain the 30-day rolling average effluent pH at or above the lowest one-hour average pH and the 30-day rolling average liquid flow rate at or above the lowest one-hour average liquid flow rate measured during the most recent performance test demonstrating compliance with the HCl emission limitation according to § 63.7530(b) and Table 7 to this subpart.
3. Fabric filter control on units not using a PM CPMS.	a. Maintain opacity to less than or equal to 10 percent opacity (daily block average); or b. Install and operate a bag leak detection system according to § 63.7525 and operate the fabric filter such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during each 6-month period.
4. Electrostatic precipitator control on units not using a PM CPMS.	a. This option is for boilers and process heaters that operate dry control systems (*i.e.,* an ESP without a wet scrubber). Existing and new boilers and process heaters must maintain opacity to less than or equal to 10 percent opacity (daily block average); or b. This option is only for boilers and process heaters not subject to PM CPMS or continuous compliance with an opacity limit (*i.e.,* COMS). Maintain the 30-day rolling average total secondary electric power input of the electrostatic precipitator at or above the operating limits established during the performance test according to § 63.7530(b) and Table 7 to this subpart.

TABLE 4—TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS—Continued

If you demonstrate compliance using . . .	You must meet these operating limits . . .
5. Dry scrubber or carbon injection control on a boiler not using a mercury CEMS.	Maintain the minimum sorbent or carbon injection rate as defined in § 63.7575 of this subpart.
6. Any other add-on air pollution control type on units not using a PM CPMS.	This option is for boilers and process heaters that operate dry control systems. Existing and new boilers and process heaters must maintain opacity to less than or equal to 10 percent opacity (daily block average).
7. Fuel analysis	Maintain the fuel type or fuel mixture such that the applicable emission rates calculated according to § 63.7530(c)(1), (2) and/or (3) is less than the applicable emission limits.
8. Performance testing	For boilers and process heaters that demonstrate compliance with a performance test, maintain the operating load of each unit such that it does not exceed 110 percent of the average operating load recorded during the most recent performance test.
9. Oxygen Analyzer System	For boilers and process heaters subject to a carbon monoxide emission limit that demonstrate compliance with an O_2 analyzer system as specified in § 63.7525(a), maintain the oxygen level such that it is not below the lowest hourly average oxygen concentration measured during the most recent CO performance test.

As stated in § 63.7520, you must comply with the following requirements for performance testing for existing, new or reconstructed affected sources:

TABLE 5—TO SUBPART DDDDD OF PART 63—PERFORMANCE TESTING REQUIREMENTS

To conduct a performance test for the following pollutant . . .	You must . . .	Using . . .
1. Particulate Matter	a. Select sampling ports location and the number of traverse points.	Method 1 at 40 CFR part 60, appendix A–1 of this chapter.
	b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G at 40 CFR part 60, appendix A–1 or A–2 to part 60 of this chapter.
	c. Determine oxygen or carbon dioxide concentration of the stack gas.	Method 3A or 3B at 40 CFR part 60, appendix A–2 to part 60 of this chapter, or ANSI/ASME PTC 19.10–1981.[a]
	d. Measure the moisture content of the stack gas.	Method 4 at 40 CFR part 60, appendix A–3 of this chapter.
	e. Measure the particulate matter emission concentration.	Method 5 or 17 (positive pressure fabric filters must use Method 5D) at 40 CFR part 60, appendix A–3 or A–6 of this chapter.
	f. Convert emissions concentration to lb per MMBtu emission rates.	Method 19 F-factor methodology at 40 CFR part 60, appendix A–7 of this chapter.
2. Hydrogen chloride	a. Select sampling ports location and the number of traverse points.	Method 1 at 40 CFR part 60, appendix A–1 of this chapter.
	b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G at 40 CFR part 60, appendix A–2 of this chapter.
	c. Determine oxygen or carbon dioxide concentration of the stack gas.	Method 3A or 3B at 40 CFR part 60, appendix A–2 of this chapter, or ANSI/ASME PTC 19.10–1981.[a]
	d. Measure the moisture content of the stack gas.	Method 4 at 40 CFR part 60, appendix A–3 of this chapter.
	e. Measure the hydrogen chloride emission concentration.	Method 26 or 26A (M26 or M26A) at 40 CFR part 60, appendix A–8 of this chapter.
	f. Convert emissions concentration to lb per MMBtu emission rates.	Method 19 F-factor methodology at 40 CFR part 60, appendix A–7 of this chapter.
3. Mercury	a. Select sampling ports location and the number of traverse points.	Method 1 at 40 CFR part 60, appendix A–1 of this chapter.
	b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G at 40 CFR part 60, appendix A–1 or A–2 of this chapter.
	c. Determine oxygen or carbon dioxide concentration of the stack gas.	Method 3A or 3B at 40 CFR part 60, appendix A–1 of this chapter, or ANSI/ASME PTC 19.10–1981.[a]
	d. Measure the moisture content of the stack gas.	Method 4 at 40 CFR part 60, appendix A–3 of this chapter.
	e. Measure the mercury emission concentration.	Method 29, 30A, or 30B (M29, M30A, or M30B) at 40 CFR part 60, appendix A–8 of this chapter or Method 101A at 40 CFR part 60, appendix B of this chapter, or ASTM Method D6784.[a]
	f. Convert emissions concentration to lb per MMBtu emission rates.	Method 19 F-factor methodology at 40 CFR part 60, appendix A–7 of this chapter.
4. CO	a. Select the sampling ports location and the number of traverse points.	Method 1 at 40 CFR part 60, appendix A–1 of this chapter.
	b. Determine oxygen concentration of the stack gas.	Method 3A or 3B at 40 CFR part 60, appendix A–3 of this chapter, or ASTM D6522–00 (Reapproved 2005), or ANSI/ASME PTC 19.10–1981.[a]
	c. Measure the moisture content of the stack gas.	Method 4 at 40 CFR part 60, appendix A–3 of this chapter.

TABLE 5—TO SUBPART DDDDD OF PART 63—PERFORMANCE TESTING REQUIREMENTS—Continued

To conduct a performance test for the following pollutant . . .	You must . . .	Using . . .
	d. Measure the CO emission concentration.	Method 10 at 40 CFR part 60, appendix A–4 of this chapter. Use a span value of 2 times the concentration of the applicable emission limit.

[a] Incorporated by reference, see § 63.14.

As stated in § 63.7521, you must comply with the following requirements for fuel analysis testing for existing, new or reconstructed affected sources. However, equivalent methods (as defined in § 63.7575) may be used in lieu of the prescribed methods at the discretion of the source owner or operator:

TABLE 6—TO SUBPART DDDDD OF PART 63—FUEL ANALYSIS REQUIREMENTS

To conduct a fuel analysis for the following pollutant . . .	You must . . .	Using . . .
1. Mercury	a. Collect fuel samples	Procedure in § 63.7521(c) or ASTM D2234/D2234M [a] (for coal) or EPA 1631 or EPA 1631E or ASTM D6323 [a] (for solid), or EPA 821–R–01–013 (for liquid or solid), or equivalent.
	b. Composite fuel samples	Procedure in § 63.7521(d) or equivalent.
	c. Prepare composited fuel samples	EPA SW–846–3050B [a] (for solid samples), EPA SW–846–3020A [a] (for liquid samples), ASTM D2013/D2013M [a] (for coal), ASTM D5198 [a] (for biomass), or ASTME829 or EPA 3050 (for solid fuel), or EPA 821–R–01–013 (for liquid or solid), or equivalent.
	d. Determine heat content of the fuel type	ASTM D5865 [a] (for coal) or ASTM E711 [a] (for biomass), or ASTM D5864 for liquids and other solids, or ASTM D240 or equivalent.
	e. Determine moisture content of the fuel type	ASTM D3173 [a], ASTM E871 [a], or ASTM D5864, or ASTM D240 or equivalent.
	f. Measure mercury concentration in fuel sample	ASTM D6722 [a] (for coal), EPA SW–846–7471B [a] (for solid samples), or EPA SW–846–7470A [a] (for liquid samples), or equivalent.
	g. Convert concentration into units of pounds of mercury per MMBtu of heat content.	Equation 8 in § 63.7530.
	h. Calculate the mercury emission rate from the boiler or process heater in units of pounds per million Btu.	Equations 10 and 12 in § 63.7530.
2. Hydrogen Chloride	a. Collect fuel samples	Procedure in § 63.7521(c) or ASTM D2234/D2234M [a] (for coal) or ASTM D6323 [a] (for coal or biomass), or equivalent.
	b. Composite fuel samples	Procedure in § 63.7521(d) or equivalent.
	c. Prepare composited fuel samples	EPA SW–846–3050B [a] (for solid samples), EPA SW–846–3020A [a] (for liquid samples), ASTM D2013/D2013M [a] (for coal), or ASTM D5198 [a] (for biomass),or ASTM E829 (for solid fuel), or EPA 3050 or equivalent.
	d. Determine heat content of the fuel type	ASTM D5865 [a] (for coal) or ASTM E711 [a] (for biomass), ASTM D5864, ASTM D240 or equivalent.
	e. Determine moisture content of the fuel type	ASTM D3173 [a] or ASTM E871 [a], or D5864, or ASTM D240 or equivalent.
	f. Measure chlorine concentration in fuel sample	EPA SW–846–9250 [a], ASTM D6721 [a], ASTM D4208 (for coal), or EPA SW–846–5050 [a] or ASTM E776 [a] (for solid fuel), or EPA SW–846–9056 or SW–846–9076 (for solids or liquids) or equivalent.
	g. Convert concentrations into units of pounds of hydrogen chloride per MMBtu of heat content.	Equation 7 in § 63.7530.
	h. Calculate the hydrogen chloride emission rate from the boiler or process heater in units of pounds per million Btu.	Equations 10 and 11 in § 63.7530.
3. Mercury Fuel Specification for other gas 1 fuels.	a. Measure mercury concentration in the fuel sample and convert to units of micrograms per cubic meter.	ASTM D5954 [a], ASTM D6350 [a], ISO 6978–1:2003(E) [a], or ISO 6978–2:2003(E) [a], or equivalent.
4. Total Selected Metals for solid fuels.	a. Collect fuel samples	Procedure in § 63.7521(c) or ASTM D2234/D2234M [a] (for coal) or ASTM D6323 [a] (for coal or biomass), or equivalent.
	b. Composite fuel samples	Procedure in § 63.7521(d) or equivalent.

TABLE 6—TO SUBPART DDDDD OF PART 63—FUEL ANALYSIS REQUIREMENTS—Continued

To conduct a fuel analysis for the following pollutant . . .	You must . . .	Using . . .
	c. Prepare composited fuel samples	EPA SW–846–3050B [a] (for solid samples), EPA SW–846–3020A [a] (for liquid samples), ASTM D2013/D2013M [a] (for coal), ASTM D5198 [a] or TAPPI T266 (for biomass), or ASTM E829 (for solid fuel), or EPA 3050 or equivalent.
	d. Determine heat content of the fuel type	ASTM D5865 [a] (for coal) or ASTM E711 [a] (for biomass), or ASTM D5864 for liquids and other solids, or ASTM D240 or equivalent.
	e. Determine moisture content of the fuel type	ASTM D3173 [a] or ASTM E871 [a], or D5864, or ASTM D240 or equivalent.
	f. Measure total selected metals concentration in fuel sample.	ASTM D3683, or ASTM D4606, or ASTM D6357 or EPA 200.8 or or EPA SW–846–6020, or EPA SW–846–6020A, or ASTM E885, or EPA SW–846–6010B, EPA 7060 or EPA 7060A (for arsenic only), or EPA SW–846–7740 (for selenium only),
	g. Convert concentrations into units of pounds of total selected metals per MMBtu of heat content.	Equations 9 in § 63.7530.
	h. Calculate the total selected metals emission rate from the boiler or process heater in units of pounds per million Btu.	Equations 10 and 13 in § 63.7530.

[a] Incorporated by reference, see § 63.14.

As stated in § 63.7520, you must comply with the following requirements for establishing operating limits:

TABLE 7—TO SUBPART DDDDD OF PART 63—ESTABLISHING OPERATING LIMITS

If you have an applicable emission limit for . . .	And your operating limits are based on . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Particulate matter, total selected metals, or mercury.	a. Wet scrubber operating parameters.	i. Establish a site-specific minimum scrubber pressure drop and minimum flow rate operating limit according to § 63.7530(b).	(1) Data from the scrubber pressure drop and liquid flow rate monitors and the particulate matter or mercury performance test.	(a) You must collect scrubber pressure drop and liquid flow rate data every 15 minutes during the entire period of the performance tests. (b) Determine the lowest hourly average scrubber pressure drop and liquid flow rate by computing the hourly averages using all of the 15-minute readings taken during each performance test.
	b. Electrostatic precipitator operating parameters (option only for units that operate wet scrubbers).	i. Establish a site-specific minimum total secondary electric power input according to § 63.7530(b).	(1) Data from the voltage and secondary amperage monitors during the particulate matter or mercury performance test.	(a) You must collect secondary voltage and secondary amperage for each ESP cell and calculate total secondary electric power input data every 15 minutes during the entire period of the performance tests. (b) Determine the average total secondary electric power input by computing the hourly averages using all of the 15-minute readings taken during each performance test.
2. Hydrogen Chloride	a. Wet scrubber operating parameters.	i. Establish site-specific minimum pressure drop, effluent pH, and flow rate operating limits according to § 63.7530(b).	(1) Data from the pressure drop, pH, and liquid flow-rate monitors and the hydrogen chloride performance test.	(a) You must collect pH and liquid flow-rate data every 15 minutes during the entire period of the performance tests.

TABLE 7—TO SUBPART DDDDD OF PART 63—ESTABLISHING OPERATING LIMITS—Continued

If you have an applicable emission limit for . . .	And your operating limits are based on . . .	You must . . .	Using . . .	According to the following requirements . . .
				(b) Determine the hourly average pH and liquid flow rate by computing the hourly averages using all of the 15-minute readings taken during each performance test.
	b. Dry scrubber operating parameters.	i. Establish a site-specific minimum sorbent injection rate operating limit according to § 63.7530(b) If different acid gas sorbents are used during the hydrogen chloride performance test, the average value for each sorbent becomes the site-specific operating limit for that sorbent.	(1) Data from the sorbent injection rate monitors and hydrogen chloride or mercury performance test.	(a) You must collect sorbent injection rate data every 15 minutes during the entire period of the performance tests.
				(b) Determine the hourly average sorbent injection rate by computing the hourly averages using all of the 15-minute readings taken during each performance test.
				(c) Determine the lowest hourly average of the three test run averages established during the performance test as your operating limit. When your unit operates at lower loads, multiply your sorbent injection rate by the load fraction (*e.g.,* for 50 percent load, multiply the injection rate operating limit by 0.5) to determine the required injection rate.
3. Mercury	a. Activated carbon injection.	i. Establish a site-specific minimum activated carbon injection rate operating limit according to § 63.7530(b).	(1) Data from the activated carbon rate monitors and mercury performance test.	(a) You must collect activated carbon injection rate data every 15 minutes during the entire period of the performance tests.
				(b) Determine the hourly average activated carbon injection rate by computing the hourly averages using all of the 15-minute readings taken during each performance test.

TABLE 7—TO SUBPART DDDDD OF PART 63—ESTABLISHING OPERATING LIMITS—Continued

If you have an applicable emission limit for . . .	And your operating limits are based on . . .	You must . . .	Using . . .	According to the following requirements . . .
				(c) Determine the lowest hourly average established during the performance test as your operating limit. When your unit operates at lower loads, multiply your activated carbon injection rate by the load fraction (*e.g.,* actual heat input divided by heat input during performance test, for 50 percent load, multiply the injection rate operating limit by 0.5) to determine the required injection rate.
4. Carbon monoxide	a. Oxygen	i. Establish a unit-specific limit for minimum oxygen level according to § 63.7520.	(1) Data from the oxygen analyzer system specified in § 63.7525(a).	(a) You must collect oxygen data every 15 minutes during the entire period of the performance tests. (b) Determine the hourly average oxygen concentration by computing the hourly averages using all of the 15-minute readings taken during each performance test. (c) Determine the lowest hourly average established during the performance test as your minimum operating limit.
5. Any pollutant for which compliance is demonstrated by a performance test.	a. Boiler or process heater operating load.	i. Establish a unit specific limit for maximum operating load according to § 63.7520(c).	(1) Data from the operating load monitors or from steam generation monitors.	(a) You must collect operating load or steam generation data every 15 minutes during the entire period of the performance test. (b) Determine the average operating load by computing the hourly averages using all of the 15-minute readings taken during each performance test. (c) Determine the average of the three test run averages during the performance test, and multiply this by 1.1 (110 percent) as your operating limit.

As stated in § 63.7540, you must show continuous compliance with the emission limitations for affected sources according to the following:

TABLE 8—TO SUBPART DDDDD OF PART 63—DEMONSTRATING CONTINUOUS COMPLIANCE

If you must meet the following operating limits or work practice standards . . .	You must demonstrate continuous compliance by . . .
1. Opacity	a. Collecting the opacity monitoring system data according to § 63.7525(c) and § 63.7535; and b. Reducing the opacity monitoring data to 6-minute averages; and c. Maintaining opacity to less than or equal to 10 percent (daily block average).
2. PM CPMS	a. Collecting the PM CPMS output data according to § 63.7525;

TABLE 8—TO SUBPART DDDDD OF PART 63—DEMONSTRATING CONTINUOUS COMPLIANCE—Continued

If you must meet the following operating limits or work practice standards . . .	You must demonstrate continuous compliance by . . .
	b. Reducing the data to 30-day rolling averages; and c. Maintaining the 30-day rolling average PM CPMS output data to less than the operating limit established during the performance test according to § 63.7530.
3. Fabric Filter Bag Leak Detection Operation.	Installing and operating a bag leak detection system according to § 63.7525 and operating the fabric filter such that the requirements in § 63.7540(a)(9) are met.
4. Wet Scrubber Pressure Drop and Liquid Flow-rate.	a. Collecting the pressure drop and liquid flow rate monitoring system data according to §§ 63.7525 and 63.7535; and b. Reducing the data to 30-day rolling averages; and c. Maintaining the 30-day rolling average pressure drop and liquid flow-rate at or above the operating limits established during the performance test according to § 63.7530(b).
5. Wet Scrubber pH	a. Collecting the pH monitoring system data according to §§ 63.7525 and 63.7535; and b. Reducing the data to 30-day rolling averages; and c. Maintaining the 30-day rolling average pH at or above the operating limit established during the performance test according to § 63.7530(b).
6. Dry Scrubber Sorbent or Carbon Injection Rate.	a. Collecting the sorbent or carbon injection rate monitoring system data for the dry scrubber according to §§ 63.7525 and 63.7535; and b. Reducing the data to 30-day rolling averages; and c. Maintaining the 30-day rolling average sorbent or carbon injection rate at or above the minimum sorbent or carbon injection rate as defined in § 63.7575.
7. Electrostatic Precipitator Total Secondary Electric Power Input.	a. Collecting the total secondary electric power input monitoring system data for the electrostatic precipitator according to §§ 63.7525 and 63.7535; and b. Reducing the data to 30-day rolling averages; and c. Maintaining the 30-day rolling average total secondary electric power input at or above the operating limits established during the performance test according to § 63.7530(b).
8. Fuel Pollutant Content	a. Only burning the fuel types and fuel mixtures used to demonstrate compliance with the applicable emission limit according to § 63.7530(b) or (c) as applicable; and b. Keeping monthly records of fuel use according to § 63.7540(a).
9. Oxygen content	a. Continuously monitor the oxygen content using an oxygen trim system according to § 63.7525(a). b. Reducing the data to 30-day rolling averages; and c. Maintain the 30-day rolling average oxygen content at or above the lowest hourly average oxygen level measured during the most recent carbon monoxide performance test.
10. Carbon monoxide emissions.	a. Continuously monitor the carbon monoxide concentration in the combustion exhaust according to § 63.7525(a). b. Correcting the data to 3 percent oxygen, and reducing the data to one-hour and daily block averages for all subcategories except units designed to burn liquid fuels located in non-continental states and territories; c. Reducing the data from the daily averages to 10-day rolling averages for all subcategories except units designed to burn liquid fuels located in non-continental states and territories; d. Reducing the data from the one-hour averages to three-hour averages for units designed to burn liquid fuels located in non-continental states and territories; e. Maintaining the 10-day rolling average carbon monoxide concentration at or below the applicable emission limit in Tables 1 or 2 of this subpart for all subcategories except units designed to burn liquid fuels located in non-continental states and territories; and f. Maintaining the 3-hour rolling average carbon monoxide concentration at or below the applicable emission limit in Tables 1 or 2 of this subpart for units designed to burn liquid fuels located in non-continental states and territories.
11. Boiler or process heater operating load.	a. Collecting operating load data or steam generation data every 15 minutes. b. Maintaining the operating load such that it does not exceed 110 percent of the average operating load recorded during the most recent performance test according to § 63.7520(c).

As stated in § 63.7550, you must comply with the following requirements for reports:

TABLE 9—TO SUBPART DDDDD OF PART 63—REPORTING REQUIREMENTS

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. Information required in § 63.7550(c)(1) through (12); and	Semiannually, annually, biennially, or every 5 years according to the requirements in § 63.7550(b).

TABLE 9—TO SUBPART DDDDD OF PART 63—REPORTING REQUIREMENTS—Continued

You must submit a(n)	The report must contain . . .	You must submit the report . . .
	b. If there are no deviations from any emission limitation (emission limit and operating limit) that applies to you and there are no deviations from the requirements for work practice standards in Table 3 to this subpart that apply to you, a statement that there were no deviations from the emission limitations and work practice standards during the reporting period. If there were no periods during which the CMSs, including continuous emissions monitoring system, continuous opacity monitoring system, and operating parameter monitoring systems, were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMSs were out-of-control during the reporting period; and c. If you have a deviation from any emission limitation (emission limit and operating limit) where you are not using a CMS to comply with that emission limit or operating limit, or a deviation from a work practice standard during the reporting period, the report must contain the information in § 63.7550(d); and d. If there were periods during which the CMSs, including continuous emissions monitoring system, continuous opacity monitoring system, and operating parameter monitoring systems, were out-of-control as specified in § 63.8(c)(7), or otherwise not operating, the report must contain the information in § 63.7550(e).	

As stated in § 63.7565, you must comply with the applicable General Provisions according to the following:

TABLE 10—TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD

Citation	Subject	Applies to subpart DDDDD
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes. Additional terms defined in § 63.7575.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities and Circumvention	Yes.
§ 63.5	Preconstruction Review and Notification Requirements.	Yes.
§ 63.6(a), (b)(1)–(b)(5), (b)(7), (c)	Compliance with Standards and Maintenance Requirements.	Yes.
§ 63.6(e)(1)(i)	General duty to minimize emissions.	No. See § 63.7500(a)(3) for the general duty requirement.
§ 63.6(e)(1)(ii)	Requirement to correct malfunctions as soon as practicable.	No.
§ 63.6(e)(3)	Startup, shutdown, and malfunction plan requirements.	No.
§ 63.6(f)(1)	Startup, shutdown, and malfunction exemptions for compliance with non-opacity emission standards.	No.
§ 63.6(f)(2) and (3)	Compliance with non-opacity emission standards.	Yes.
§ 63.6(g)	Use of alternative standards	Yes.
§ 63.6(h)(1)	Startup, shutdown, and malfunction exemptions to opacity standards.	No. See § 63.7500(a).
§ 63.6(h)(2) to (h)(9)	Determining compliance with opacity emission standards.	Yes.
§ 63.6(i)	Extension of compliance	Yes. Facilities may request extensions of compliance for the installation of combined heat and power or waste heat recovery as a means of complying with this subpart.
§ 63.6(j)	Presidential exemption	Yes.
§ 63.7(a), (b), (c), and (d)	Performance Testing Requirements	Yes.
§ 63.7(e)(1)	Conditions for conducting performance tests.	No. Subpart DDDDD specifies conditions for conducting performance tests at § 63.7520(a) to (c).
§ 63.7(e)(2)–(e)(9), (f), (g), and (h)	Performance Testing Requirements	Yes.
§ 63.8(a) and (b)	Applicability and Conduct of Monitoring	Yes.
§ 63.8(c)(1)	Operation and maintenance of CMS	Yes.
§ 63.8(c)(1)(i)	General duty to minimize emissions and CMS operation.	No. See § 63.7500(a)(3).
§ 63.8(c)(1)(ii)	Operation and maintenance of CMS	Yes.
§ 63.8(c)(1)(iii)	Startup, shutdown, and malfunction plans for CMS.	No.
§ 63.8(c)(2) to (c)(9)	Operation and maintenance of CMS	Yes.

TABLE 10—TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD—Continued

Citation	Subject	Applies to subpart DDDDD
§ 63.8(d)(1) and (2)	Monitoring Requirements, Quality Control Program.	Yes.
§ 63.8(d)(3)	Written procedures for CMS	Yes, except for the last sentence, which refers to a startup, shutdown, and malfunction plan. Startup, shutdown, and malfunction plans are not required.
§ 63.8(e)	Performance evaluation of a CMS	Yes.
§ 63.8(f)	Use of an alternative monitoring method	Yes.
§ 63.8(g)	Reduction of monitoring data	Yes.
§ 63.9	Notification Requirements	Yes.
§ 63.10(a), (b)(1)	Recordkeeping and Reporting Requirements	Yes.
§ 63.10(b)(2)(i)	Recordkeeping of occurrence and duration of startups or shutdowns.	Yes.
§ 63.10(b)(2)(ii)	Recordkeeping of malfunctions	No. See § 63.7555(d)(7) for recordkeeping of occurrence and duration and § 63.7555(d)(8) for actions taken during malfunctions.
§ 63.10(b)(2)(iii)	Maintenance records	Yes.
§ 63.10(b)(2)(iv) and (v)	Actions taken to minimize emissions during startup, shutdown, or malfunction.	No.
§ 63.10(b)(2)(vi)	Recordkeeping for CMS malfunctions	Yes.
§ 63.10(b)(2)(vii) to (xiv)	Other CMS requirements	Yes.
§ 63.10(b)(3)	Recordkeeping requirements for applicability determinations.	No.
§ 63.10(c)(1) to (9)	Recordkeeping for sources with CMS	Yes.
§ 63.10(c)(10) and (11)	Recording nature and cause of malfunctions, and corrective actions.	No. See § 63.7555(d)(7) for recordkeeping of occurrence and duration and § 63.7555(d)(8) for actions taken during malfunctions.
§ 63.10(c)(12) and (13)	Recordkeeping for sources with CMS	Yes.
§ 63.10(c)(15)	Use of startup, shutdown, and malfunction plan	No.
§ 63.10(d)(1) and (2)	General reporting requirements	Yes.
§ 63.10(d)(3)	Reporting opacity or visible emission observation results.	No.
§ 63.10(d)(4)	Progress reports under an extension of compliance.	Yes.
§ 63.10(d)(5)	Startup, shutdown, and malfunction reports	No. See § 63.7550(c)(11) for malfunction reporting requirements.
§ 63.10(e)	Additional reporting requirements for sources with CMS.	Yes.
§ 63.10(f)	Waiver of recordkeeping or reporting requirements.	Yes.
§ 63.11	Control Device Requirements	No.
§ 63.12	State Authority and Delegation	Yes.
§ 63.13–63.16	Addresses, Incorporation by Reference, Availability of Information, Performance Track Provisions.	Yes.
§ 63.1(a)(5),(a)(7)–(a)(9), (b)(2), (c)(3)–(4), (d), 63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv), 63.8(a)(3), 63.9(b)(3), (h)(4), 63.10(c)(2)–(4), (c)(9).	Reserved	No.

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Part VI

Commodity Futures Trading Commission

17 CFR Part 48

Registration of Foreign Boards of Trade; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 48

RIN 3038–AD19

Registration of Foreign Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is issuing final rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). On November 19, 2010, the Commission requested comment on proposed rules that would establish a registration requirement that applies to foreign boards of trade (FBOT) that wish to provide their identified members or other participants located in the United States with direct access to their electronic trading and order matching systems. After reviewing the comments submitted in response to the proposed rules, the Commission has determined to issue these final FBOT registration rules substantially as originally proposed, with certain modifications.

DATES: *Effective Date*—February 21, 2012.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Senior Special Counsel, (202) 418–5492, *dandresen@cftc.gov*, or David Steinberg, Special Counsel, (202) 418–5102, *dsteinberg@cftc.gov*, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

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I. Background

A. Introduction

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act[2] amended the Commodity Exchange Act (CEA or the Act)[3] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 738 of the Dodd-Frank Act amended CEA section 4(b) to provide that the Commission may adopt rules and regulations requiring FBOTs that wish to provide their members or other participants located in the United States with direct access to the FBOT's electronic trading and order matching system to register with the Commission. Direct access is defined in the statute as an explicit grant of authority by an FBOT to an identified member or other participant located in the U.S. to enter trades directly into the FBOT's trade matching system.[4] CEA section 4(b) also authorizes the Commission to promulgate rules and regulations prescribing procedures and requirements applicable to the registration of such FBOTs.

Accordingly, on November 19, 2010, the Commission published a notice of proposed rulemaking that set forth proposed regulations that would establish a registration requirement and related registration procedures and conditions applicable to FBOTs that wish to provide their members or other participants located in the United States with direct access to their electronic trading and order matching system (NPRM).[5] The Commission requested comment on all aspects of the proposed regulations. After thoroughly reviewing the comments submitted in response to the NPRM, the Commission has determined to issue these final rules which are substantially the same as those proposed, with some modifications made in response to certain of the comments received and with a partially revised format, as discussed below.

B. Foreign Boards of Trade and Direct Access

1. History of the No-action Process

Since 1996, FBOT requests to provide members and other participants that are located in the U.S. with direct access to their electronic trading and order matching systems have been addressed

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./Law Regulation/OTCDERIVATIVES/index.htm.*

[2] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

[3] 7 U.S.C. 1 *et seq.*

[4] Direct access is defined in CEA section 4(b)(1)(A).

[5] *See Registration of Foreign Boards of Trade*, 75 FR 70974 (November 19, 2010).

by Commission staff in accordance with the no-action process set forth in Commission regulation 140.99.[6] Specifically, such FBOTs seeking to provide direct access to members and participants located in the U.S. have requested, and, where appropriate, received from the relevant division of the Commission, a no-action letter in which division staff represents that, provided the FBOT satisfies the conditions set forth therein, the division will not recommend that the Commission institute enforcement action against the FBOT for failure to register as a designated contract market (DCM) or derivatives transaction facility (DTEF). Since 1996, Commission staff has issued 24 direct access no-action relief letters (formerly referred to as foreign terminal no-action relief letters) to FBOTs, 20 of which remain active.[7] A detailed discussion of the history and evolution of the FBOT no-action process and the scope of the relief provided can be found in the NPRM.[8]

While the no-action process has served a useful purpose, the Commission, given the new authority provided by Congress in the Dodd-Frank Act to promulgate registration requirements applicable to FBOTs that provide direct access, has determined to replace the staff no-action process with generally applicable Commission regulations.

2. Commission Determination To Adopt Formal Registration Rules

In determining to adopt formal registration rules for FBOTs, the Commission has also considered that the no-action process is generally better suited for discrete, unique factual circumstances and for situations where neither the CEA nor the Commission's regulations address the issue presented. The Commission has determined that, where the same type of relief is being granted on a regular and recurring basis, as it has been with respect to permitting FBOTs to provide direct access to their trading systems to specified members and other participants that are located in the U.S., it is no longer appropriate to handle requests for the relief through the no-action process. Rather, such matters should be addressed in generally applicable registration regulations.

By implementing uniform application procedures and registration requirements and conditions, the process by which FBOTs are permitted to provide members and other participants located in the United States with direct access to their trading systems will become more standardized and more transparent to both registration applicants and the general public and will promote fair and consistent treatment of all applicants. Further, generally applicable regulations will provide greater legal certainty for FBOTs providing direct access than the no-action relief process because no-action letters are issued by the staff and are not binding on the Commission. The Commission also notes that an FBOT registration regime will be more consistent with the statutory authority pursuant to which other countries, including the United Kingdom, Australia, Singapore, Japan and Germany, among others, permit U.S.-based DCMs to provide direct access internationally.

Accordingly, for the reasons noted above and pursuant to the new authority provided by amended CEA section 4(b), the Commission has determined to adopt FBOT registration regulations. The final rules will replace the existing policy of accepting and reviewing requests for no-action relief to permit an FBOT to provide for direct access to its trading system with a requirement that an FBOT seeking to provide such access must apply for and be granted registration with the Commission.[9]

3. Overview of NPRM

As noted above, on November 19, 2010, the Commission published a NPRM in which it proposed regulations that would require FBOTs that wish to provide their members or other participants located in the U.S. with direct access to the FBOT's electronic trading and order matching system to become registered with the Commission. The proposed rules described the types of FBOTs that would be eligible for registration under the proposed regulations and prescribed the application procedures, requirements, and conditions that would be applicable to such registration. The rules were proposed to be codified in new Part 48 of the Commission's regulations. The proposed regulations provided that it would be unlawful for an FBOT to permit direct access to members and other participants in the U.S. unless the FBOT was registered with the Commission. The proposed requirements for registration were divided into the same seven general categories evaluated during the course of a review of a request for FBOT no-action relief: membership criteria, trading system, contracts, settlement and clearing, regulatory authorities, rules and rule enforcement, and information sharing. Pursuant to the proposed regulations, whether the registration requirements are successfully met would be determined by review of the information and documentation submitted by the applicant and, if appropriate, a staff on-site visit to the FBOT and clearing organization and their regulatory authorities to observe and discuss procedures and policies described in the information submitted by the applicant. The proposal also contained the conditions that a registered FBOT would be required to meet to retain its registration, including continued satisfaction of the registration requirements; conditions related to the FBOT's regulation in its home country; satisfaction of comparable international standards; restrictions upon the FBOT's provision of direct access; acknowledgement and agreement to Commission jurisdiction; information-sharing requirements; monitoring for and enforcing compliance with the conditions of registration; conditions specifically applicable to swap trading; reporting obligations; and special conditions that would apply to linked contracts.[10] As proposed, the rules provided for a ''limited'' application process for FBOTs currently operating pursuant to existing no-action relief.[11]

[6] *See, e.g.*, CFTC Letter No. 96–28 (February 29, 1996). Commission regulation 140.99 defines the term ''no-action letter'' as a written statement issued by the staff of a Division of the Commission or of the Office of the General Counsel that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the beneficiary.

[7] One no-action relief letter was superseded and three were revoked when the FBOTs ceased operations as regulated or recognized markets. Currently, 14 of the FBOTs with active no-action relief report volume originating from the U.S. via direct access.

[8] 75 FR 70974–76.

[9] In 2006, the Commission issued a Policy Statement in which it endorsed the no-action process for FBOTs that want to provide direct access to their trading systems to U.S.-based participants. *Boards of Trade Located Outside of the United States and No-Action Relief From the Requirement To Become A Designated Contract Market or Derivatives Transaction Execution Facility*, 71 FR 64843 (Nov. 2, 2006) (Policy Statement). With the exception of the Commission's endorsement of the use of no-action relief to permit direct access, which is superseded by this final rule, the Policy Statement remains effective.

[10] CEA section 4(b)(1)(B) defines a linked contract as an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity.

[11] The proposed rules would have required that FBOTs operating under existing no-action relief submit a limited application for registration within 120 days of the effective date of the registration rules. An FBOT would be permitted to continue to operate pursuant to the no-action relief during the

Continued

The proposal also set forth the procedures to be followed should an FBOT wish to list additional contracts for trading by direct access after being registered. Finally, the proposal identified certain events that may trigger the revocation of an FBOT's registration.

II. Summary of Comments

A. General Comments

The Commission received 147 comments in response to the NPRM.[12] The comments included 24 comment letters that addressed a variety of substantive issues raised by the proposal. Those 24 comment letters came from entities representing a broad range of interests, including eleven letters representing fourteen FBOTs currently providing direct access to members or other participants in the U.S. pursuant to staff direct access no-action relief letters [13] and three letters from FBOTs that were not currently providing direct access to U.S. participants.[14] The Commission also received comments from a U.S. derivatives marketplace,[15] three industry or trade associations,[16] a non-profit organization,[17] a natural gas company,[18] a foreign regulator,[19] a United States Senator,[20] and the Commodity Market Oversight Coalition.[21]

The Commission also received 94 virtually identical comment letters from self-identified small business owners in the oil and gas industry and/or grocery industry. Each of these letters presented a range of comments spanning several provisions of the Dodd-Frank Act and, with respect to the proposed FBOT regulations, included nearly identical text in which the commenters generally expressed support for the requirement that FBOTs register with the Commission and for the requirements that FBOTs adopt position limits, implement prohibitions on manipulation and excessive speculation, and be subject to ownership caps.[22]

Of the 24 comment letters addressing various substantive FBOT registration issues in the proposed regulations, 17 letters voiced general support for the proposed rules and for the adoption of an FBOT registration process.[23] For example, OMX stated:

> Our overall impression of the proposed rules is that they will create a more transparent and standardized process that will provide a greater legal certainty for FBOTs. We are thus under the impression that the new rules will represent an improvement of the legal process related to FBOTs.

Similarly, Eurex commented:

> Eurex supports the proposed regulations as set forth in the [NPRM] and it values the legal certainty that registration by the Commission will provide. Eurex looks forward to being registered by the Commission as an FBOT and to the fuller participation in the development of the U.S. derivatives industry that it expects will accompany registration.

Each of the generally supportive comments, however, also offered varying critiques that focused on specific issues. These are discussed in greater detail below.

Four of these comment letters generally did not support the proposed rules [24] and one comment letter raised concerns with respect to the impact of FBOT registration on the effectiveness of the Dodd-Frank Act.[25] For example, NYX and ESMA questioned whether a registration regime was superior to the existing no-action process. Specifically, NYX noted, ''[W]e are not convinced that a move from the existing regime to a more formal, rules-based solution is either necessary or desirable.'' ESMA noted that, ''It seems to us that there is no legal provision that would require the CFTC to depart from the present practice of issuing no-action relief letters. [* * *] [T]he new registration procedure and the mandatory application of very comprehensive, ongoing requirements to all FBOTs would be burdensome and costly without any apparent improvements for the safeguard of public interests such as the maintenance of fair and orderly markets, investor protection and the resilience of the market.'' Similarly, LME, while supporting the Commission's desire to establish a standardized regulatory framework for FBOTs that wish to provide direct access to U.S.-domiciled market participants, commented that the approach of requiring FBOTs to register with the Commission would constitute an unnecessary burden on the CFTC and FBOT applicant resources and stated its preference for a comparability-based exemptive approach, which would accomplish the same objectives, rather than a registration regime. HKFE commented that creating unnecessary obstacles to cross-border trading will affect all markets and market participants and limit the use of risk mitigating instruments traded in global markets.

The CME Group expressed concern that the prescriptive nature of the rules

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120-day period and until the Commission notified the FBOT that the application was approved or denied.

[12] The comment file is available on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=902.*

[13] Dubai Mercantile Exchange (DME), London Metal Exchange (LME), Australian Securities Exchange (ASX), Montreal Exchange Inc. (MX), Intercontinental Exchange (ICE) (owner of ICE Futures Europe and ICE Futures Canada), European Energy Exchange AG (EEX), Hong Kong Futures Exchange Limited (HKFE), BM&F Bovespa (BM&F), Nasdaq OMX Oslo ASA (OMX), NYSE Euronext (NYX) (operator of three FBOTs, Liffe Administration and Management, Euronext Paris SA, and Euronext Amsterdam N.V.), and Eurex Deutschland (Eurex).

[14] Osaka Securities Exchange (OSE), Natural Gas Exchange, Inc. (NGX), and Bursa Malaysia Derivatives Exchange (Bursa Derivatives). A direct access no-action letter was issued to OSE on June 1, 2011. NGX is currently operating as an exempt commercial market (ECM), and will continue to do so under the ECM grandfather relief provided for in the Dodd-Frank Act.

[15] CME Group, which includes four CFTC-registered DCMs: The Chicago Mercantile Exchange Inc. (CME), the Board of Trade of the City of Chicago, Inc. (CBOT), the New York Mercantile Exchange, Inc. (NYMEX), and the Commodity Exchange, Inc. (COMEX).

[16] Futures and Options Association (FOA), Air Transport Association of America (ATA) (two comment letters), and Petroleum Marketers Association of America and the New England Fuel Institute (Petroleum Marketers).

[17] Better Markets, Inc. (Better Markets). Better Markets describes themselves as a non-profit organization that promotes the public interest in capital and commodity markets.

[18] BG Americas & Global LNG (BG Americas).

[19] European Securities and Markets Authority (ESMA).

[20] Senator Carl Levin, Chairman of the United States Senate Permanent Subcommittee on Investigations.

[21] The Commodity Market Oversight Coalition (CMOC) states that it represents an array of interests, including the interests of commodity producers, processors, distributors, retailers, commercial and industrial end-users, and average American consumers and that it was established to promote government policy and regulation in the commodity trading markets that preserve the interests of *bona fide* hedgers and consumers and the health of the broader economy.

[22] Each of these letters contained a similar short paragraph specifically addressing the proposed FBOT rules. A representative letter stated: ''I support the requirement that FBOTs register with the CFTC and make their trading data available as well as requiring that they adopt position limits and implement prohibitions on manipulation and excessive speculation. They should also be subject to ownership caps.'' The Commission also received a brief comment from a private citizen. In addition, the comment file includes 26 comments submitted in response to the Commission's reopening of the comment period for several Dodd-Frank related rulemakings. *See Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR 25274 (May 4, 2011) (extending the comment deadline for multiple Dodd-Frank Act rulemakings to June 3, 2011). None of the comments submitted in response to the reopening of the comment period specifically addressed the proposed FBOT registration regulations and, therefore, they are not addressed in this document.

[23] *See* letters from ASX, BM&F, Bursa Derivatives, Eurex, EEX, LME, MX, OMX, NGX, OSE, FOA, ATA, BG Americas, Petroleum Marketers, CMOC and Senator Levin. ICE commented that the CFTC ''generally strikes the right balance with the proposed rulemaking.''

[24] NYX, HKFE, ESMA, and CME Group.

[25] Better Markets.

may result in retaliatory, anti-competitive action by foreign regulators. CME Group commented that:

> [W]e have significant concern that the proposed rules are overly prescriptive and will have the effect of engendering retaliatory action by foreign regulators that will inhibit our ability to continue to grow our business and compete effectively in the current global environment.

CME Group also argued that since the Dodd-Frank Act did not intend to grant the Commission general regulatory authority over FBOTs, the imposition of an information gathering process with limited utility would do little more than stretch already limited Commission resources.

Better Markets argued that enabling FBOTs to provide direct access to members and other participants in the U.S. would ''undercut[] the effectiveness of the Dodd-Frank Act'' unless FBOTs were subject to regulatory requirements that are ''the same as or equivalent to the Dodd-Frank Act structure.'' Better Markets expressed concern that, even if there are parallel systems that are adequately structured in foreign jurisdictions, there is a risk that the regulatory regime will not be administered similarly to the markets subject to Commission oversight.

B. Specific Comments

The specific issues raised by commenters can be grouped generally into nine categories and include the following: Application for registration; standard of review; contracts; direct access definition; scope of registration; registration requirements and conditions; modification of registration requirements; other concerns; and ongoing review of registered FBOTs. These concerns and the Commission's conclusions with respect to them are discussed below.

1. Application for Registration

a. Treatment of FBOTs With Existing No-Action Relief

Proposed regulation 48.6 provides that FBOTs currently providing direct access pursuant to a Commission staff no-action letter would be required to apply for registration within 120 days of the effective date of the FBOT registration regulations, but would permit them to file a limited application, as described in the proposed regulation. Eurex expressly supported the proposed limited application process; ASX welcomed the formalization of the registration requirements. Twelve of the comment letters, however, were in favor of either further narrowing the scope of the limited application process or completely grandfathering FBOTs currently operating pursuant to no-action relief. Several commenters also requested that the time period for submitting a limited application be expanded.

(i) Grandfathering and the Scope of the Limited Application

Eight of the twelve commenters, including commenters representing 11 FBOTs providing direct access to their trading systems pursuant to existing no-action relief[26] and the CME Group and FOA, specifically requested that the CFTC significantly narrow proposed § 48.6 to either provide grandfathered registration to FBOTs operating under existing no-action relief or to require FBOTs applying for registration to supply only that information which (1) has materially changed since the time the FBOT's no-action relief was granted, (2) was not previously filed with the Commission or (3) relates to newly imposed registration requirements. The commenters generally argued that the limited application process set forth in proposed § 48.6 is too burdensome and is unnecessary given that FBOTs and their regulatory regimes were reviewed by Commission staff during the process of issuing a no-action letter.

FOA commented that FBOTs currently operating under no-action relief should not have to reapply for approval to allow direct access to their markets and recommended that the CFTC should principally rely on information previously provided by the FBOT and its regulator to satisfy the proposed registration requirements and should identify for each FBOT operating under a no-action letter what specific additional information is required. NYX generally agreed with this recommendation and further suggested that, if a limited application for registration is necessary, the FBOTs should be required to consult with the Commission in order to identify which specific information not previously submitted would be necessary to demonstrate compliance with the registration requirements. BM&F commented that where an FBOT had been granted no-action relief following adoption by the Commission of the 2006 Policy Statement, that FBOT should only be required to certify that there have been no material changes to the information or representations in its request for no-action relief or, if there have been changes, to identify those changes and demonstrate how they would be in compliance with the registration rule. ICE commented that the FBOT should only be required to submit additional relevant information necessary to update the Commission's understanding of the foreign regulatory regime.

The Commission does not believe that it would be prudent to grandfather FBOTs that are operating under existing no-action relief without any further review to determine that the registration requirements set forth in § 48.7 are being met. FBOT requests for no-action relief were assessed based upon the information and documentation presented at the particular time of the request (some as early as 1999), were based upon a comparison of the regulatory regimes in the U.S. and the applicable foreign jurisdiction that existed at the time, were subject to varying standards of review that applied at the time (which have changed as statutes and policies have evolved), and were reviewed on a case-by-case basis. Just as the Dodd-Frank Act represents a significant change in the regulatory approach in the U.S., many foreign jurisdictions have changed their approaches since the time the existing no-action letters were granted as well.

The Commission also does not believe that it would be either feasible or appropriate for the Commission staff to ascertain for each FBOT operating under existing no-action relief the precise information or documentation in its individual no-action request submission that would need to be updated or revised in order to satisfy registration requirements. The FBOTs are in a better position to recognize their own particular circumstances and to identify any information and documentation that may require updating in light of those changes. This is especially true of information regarding the relevant foreign regulations to which the FBOT is presently subject, as these may have differing applicability depending upon the FBOT's particular business model. The FBOT should be afforded the opportunity to provide materials demonstrating that the foreign regime currently is comparable and comprehensive to the regulatory regime in the United States.

In response to the comments received, the Commission has determined to modify the limited application documentation requirements in one aspect. The proposed limited application process required that, to the extent an FBOT operating under existing no-action relief intends to rely upon previously submitted information or documentation to demonstrate that it satisfies the registration requirements,

[26] BM&F, DME, EEX, HKFE, ICE, MX, OMX, and NYX.

the FBOT must resubmit the information or documentation, identify the specific requirements for registration set forth in proposed § 48.7 that are satisfied by the resubmitted information, and certify that the information remains current and true. The Commission has determined to streamline the § 48.6 application requirements for any FBOT whose original no-action relief request was submitted electronically and remains on file with the Commission staff.[27] In lieu of re-transmitting to the Commission previously submitted information and documentation, such FBOTs would be permitted to simply refer to each portion of their original submission that satisfies a particular registration requirement, identify the specific registration requirement that is fulfilled by that section, and certify that the information or documentation originally provided remains current and true. The FBOT would continue to be required to submit new information or documentation, to the extent that its original application would not adequately demonstrate that the FBOT would be in compliance with one or more of the registration requirements. This typically would be necessary where one of the registration requirements, such as a requirement applicable to clearing and settlement, imposes a standard that was not applied at the time of the original application for no-action relief.

(ii) 120 Days To File Limited Application

Seven commenters, including six FBOTs and one industry association, requested that the proposed 120-day time period within which an FBOT operating under existing no-action relief would be required to file a limited application be extended. Four specifically asked that the period be lengthened to 180 days,[28] while another asked for a year.[29] Two entities commented that the registration rules should provide that FBOTs with existing no-action relief may continue to operate as such as long as they submit an application within the 120-day period, which is determined in good faith by the applicant to be complete.[30] Such commenters expressed concern that there may be an extended period of legal uncertainty after the 120-day period, but before the Commission acted upon the application.

In response to these comments the Commission has determined to adopt the proposal with certain modifications. The final regulations provide that the required timeframe within which an FBOT operating pursuant to existing no-action relief is required to submit a limited application for registration, determined in good faith by the applicant to be complete, is 180 days from the effective date of the FBOT registration rules.[31] The final rule also provides legal certainty in that § 48.6 provides that an FBOT ''may continue to operate pursuant to the existing no-action relief, subject to the terms and conditions contained therein, during the 180-day period, while the Commission is reviewing its application, and until the Commission approves or disapproves the application or otherwise withdraws the existing no-action relief.'' Thus, FBOTs could continue to provide for direct access pursuant to the no-action relief during the 180-day period and, if they submitted timely and complete applications for registration, until such time as the Commission acts upon the registration applications.

(iii) Treatment of FBOTs That Have Not Obtained No-action Relief

NGX asked whether FBOTs with pending applications could file a limited application and stated that, if so, the review of such applications should take precedence over the review of applications of FBOTs currently operating under existing no-action relief. Bursa Derivatives asked if the Commission would take into consideration any Regulation 30.10 relief granted by the Commission to an FBOT or any visit made to an FBOT in the Regulation 30.10 review when evaluating such FBOT's application under the proposed registration process.[32]

In consideration of the comments concerning limited applications for registration, the Commission has determined that an FBOT with a pending request for direct access no-action relief should be permitted to file a limited application for registration, recognizing that some of the required information and documentation is likely to have been recently submitted and, therefore, up-to-date. Thus, § 48.6 has been modified to provide that an FBOT that has submitted a complete application for no-action relief that is pending as of the effective date of the final rule could, as part of its application for registration, identify information or documents provided in its request for no-action relief that would satisfy particular registration requirements. Those aspects of the registration requirements that were not addressed in the materials submitted in connection with the no-action request would have to be addressed directly in the FBOT's registration application. With respect to the question of precedence of review, the Commission is not assigning precedence to any group of applicants. The Commission does, however, anticipate that the applications of FBOTs with pending relief requests generally will be submitted, and acted upon, before those of FBOTs which have no-action relief, largely because the latter FBOTs can continue to operate pursuant to the existing no-action relief during the 180-day timeframe for submission of an application and so long as a complete and timely application is submitted. In contrast, those FBOTs with pending relief requests cannot provide for direct access until they submit an application and receive an Order of Registration.

With respect to consideration of any regulation 30.10 relief granted by the Commission to an FBOT or related visits in evaluating the FBOT's application for registration, the Commission believes it would be appropriate to consider such information only to the extent that it is

[27] Documents submitted electronically can be more easily identified and located and can be retransmitted quickly and at less cost than documents in hard copy. It is also easier to identify and highlight those segments of an electronically submitted document that would satisfy a current requirement of registration.

[28] BM&F, EEX, LME, and MX.

[29] ICE.

[30] NYX and FOA.

[31] If, at any time after the 180-day deadline but before a limited application is approved or disapproved, the Commission determines that the application is materially incomplete, the Commission may, after providing the FBOT with notice and an opportunity to respond to the determination of incompleteness, withdraw the existing no-action relief if the Commission determines that the application cannot be made complete in a timely manner.

[32] A Rule 30.10 order permits firms that are members of a self-regulatory organization and subject to regulation by a foreign regulator to conduct business from locations outside of the U.S. for U.S. persons on non-U.S. boards of trade without registering under the CEA, based upon the firm's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the CEA. Among the issues considered by the Commission in determining whether to grant Rule 30.10 relief based on a foreign regulatory or self-regulatory authority are the authority's: (i) Requirements relating to the registration, authorization, or other form of licensing, fitness review, or qualification of persons through whom customer orders are solicited and accepted; (ii) minimum financial requirements for those persons that accept customer funds; (iii) minimum sales practice standards, including risk disclosures, and the risk of transactions undertaken outside of the United States; (iv) procedures for auditing compliance with the requirements of the regulatory program, including recordkeeping and reporting requirements; (v) standards for the protection of customer funds from misapplication; and (vi) arrangements for the sharing of information with the United States.

relevant to particular registration requirements (*e.g.,* requirements that members be fit and proper and other foreign regulatory regime standards applicable to market participants) and is identified as such by the FBOT. The Commission notes that there is limited overlap between the factors considered when granting regulation 30.10 relief and those that will be examined in connection with FBOT registration. Regulation 30.10 review primarily is focused on the foreign regulatory standards applicable to market participants. While regulation 30.10 relief could inform the Commission's decision to register an FBOT, it would not be an appropriate substitute for the comparability and comprehensiveness analysis required under the FBOT registration regulations.

b. Timeliness of Commission Review of an Application

The proposed regulations did not include a proposed timeline for completion of Commission staff review of an application. Bursa Derivatives suggested that the Commission adopt a timeline of 180 days for the Commission to notify FBOTs whether an application has been approved or denied. The commenter noted that this would be consistent with the 180 days allotted for reviewing a designated contract market application.

The Commission has determined not to adopt a firm timeline for completion of Commission staff review of an application. The Commission is committed to completing its review of applications for FBOT registration within a year or in as timely a manner as circumstances and resources will allow. However, the Commission can neither predict the total number of applications for registration that will be submitted nor whether such applications will be received simultaneously or over a period of time and, thus, cannot be assured that it would have sufficient resources at all times to meet such a self-imposed deadline. The Commission is likely to receive applications from most of the 20 FBOTs currently operating under existing no-action relief in addition to applications from other FBOTs that wish to register. The Commission notes that the lack of a specific deadline for the review of FBOT registration applications will not have a significant impact on those FBOTs currently able to provide direct access pursuant to a staff no-action letter that submit timely applications for registration. As previously noted, the final regulations permit such FBOTs to continue to provide direct access to FBOT members and other participants located in the U.S. during the review period, subject to compliance with the terms and conditions of their no-action relief letters.

2. Standard of Review

a. Need for Registration

One foreign regulator, ESMA, questioned whether replacing the practice of issuing no-action letters with a process whereby FBOTs would register with, and become subject to, the jurisdiction of the Commission would provide sufficiently enhanced public safeguards to outweigh the burdens imposed. Noting that section 738 of the Dodd-Frank Act seems to provide the Commission full flexibility on whether and how to implement the rules on registration, ESMA stated that: ''Since the CFTC has also verified in the past that a FBOT and its clearing organisation are subject to comprehensive regulation and comparable oversight by the home regulatory authority, * * * the creation of new US regulatory measures with extra-territorial application should be avoided as far as possible and replaced by effective co-operation between the home and host regulatory authorities. Jurisdiction should indeed generally be exercised by the home country alone. The necessary cooperation could be ensured by an MoU determining how the home and the host authority should collaborate, exchange information and conduct common reviews and inspections.'' [33]

HKFE and MX commented that the CFTC has already determined that FBOTs currently allowed to operate in the U.S. are subject to comprehensive and comparable regulation in their home jurisdictions under the no-action relief regime. HKFE further stated that, therefore, a substantive or a rule-by-rule review by the CFTC for the purposes of FBOT registration may not be necessary or appropriate except where the CFTC has fundamental concerns about a jurisdiction's regulations, regulatory objectives or practices.

As previously noted, requests for no-action relief were submitted to and reviewed by Commission staff and not by the Commission itself and the letters granting no-action relief are not binding upon the Commission. Moreover, in analyzing requests for no-action relief, staff did not review the requests under the same standards that will be universally applied under the final regulations. For example, staff did not specifically consider whether an FBOT or its clearing organization was subject to ''comprehensive regulation and comparable oversight by the home regulatory authority.'' Rather, staff's standard of review has ranged from determining that the FBOT is regulated by a legitimate regulatory authority to determining that the FBOT and its regulatory authority support and enforce standards for trading and customer and market protection that are equivalent to those supported by the CFTC and its regulated DCMs.

The Commission believes that the application procedures contained in the final registration regulation would provide for appropriate review. While the rule would create a new registration category, that category would operate pursuant to open and transparent standards and procedures that may not have been uniformly applied with respect to FBOT no-action letters. The proposed regulatory measures are applicable only to FBOTs that choose to provide for direct access to their trading systems to persons located in the U.S. In addition, the Commission believes that the rule, as proposed, would encourage effective co-operation between the home and host regulatory authorities in that it, among other things, provides for expanded information sharing between the regulatory authorities. Finally, with respect to the comment that the proposal is creating new U.S. regulatory measures with extra-territorial application, the Commission notes that Congress has authorized the registration of FBOTs in the Dodd-Frank Act. Moreover, the FBOT registration process relies significantly upon the Commission's determination that the FBOT's home country regulatory authority provides for comparable, comprehensive supervision and regulation. The Commission finds it particularly noteworthy that other countries that permit direct access, including the UK, Japan, Singapore, Hong Kong, Germany and Australia, among others, do so under a registration or licensing scheme. Accordingly, the Commission believes that the establishment of the FBOT registration regime in the final rule is generally consistent with international practices.

b. Foreign Supervision and the Comparable, Comprehensive Determination

As required by CEA section 4(b)(1)(A)(i), proposed § 48.5(d)(2) provided that the Commission, when reviewing an application for FBOT registration, will consider whether the FBOT and its clearing organization are subject to comprehensive supervision

[33] ESMA.

and regulation by the appropriate governmental authorities in their home country that is comparable to the comprehensive supervision and regulation to which DCMs and derivatives clearing organizations (DCO), respectively, are subject in the United States. Seven commenters specifically addressed this provision, offering critiques of the Commission's approach to evaluating an FBOT's home regulatory regime.[34]

Two commenters recommended that the Commission make a determination as to whether an FBOT is subject to a comparable comprehensive regulatory regime on a jurisdiction-by-jurisdiction basis where appropriate.[35] For example, if more than one FBOT is subject to the regulatory regime in the United Kingdom, the Commission could make a single determination as to the comparability and comprehensiveness of the regulatory regime in the United Kingdom.

In consideration of these comments, the final regulation, in the application form for registration, Form FBOT,[36] provides for a jurisdiction-based review of the comparability of the foreign regulatory regime when multiple FBOTs that are subject to the same regulatory regime are applying for registration. Specifically, the regulation, through the Form FBOT, provides that multiple FBOTs that are subject to the same regulatory regime and that are applying for registration at the same time may collectively provide information regarding the regulatory regime under which they operate. The information may be provided by the FBOTs themselves, or by the applicable foreign regulatory authority.

The Commission does not agree, however, that a determination that an FBOT operating in one jurisdiction should be registered eliminates the need to conduct a subsequent inquiry into the laws and regulations applicable to a different FBOT in the same jurisdiction that applies for registration at a different time. Additionally, a single jurisdictional analysis of comprehensiveness and comparability may not be able to take into account the fact that different FBOTs operating in the same jurisdiction may be subject to different regulations, depending upon a host of factors including, among other things, their business structure, the participants they accept, the products they trade and the exceptions and exemptions provided in the relevant regulatory regime. Accordingly, two FBOTs operating in the same country may be subject to regulation that differs in substantive ways. Moreover, financial markets worldwide are currently in an enhanced state of regulatory flux, making it a particularly inopportune time to state that once a jurisdiction is deemed comparable, it will be deemed comparable for the purpose of all future applications.[37]

(i) Consideration of the Totality of Regulation

Eurex, noting that in many jurisdictions the concept of self-regulation is not as established as in the U.S. and that foreign exchanges are not empowered in the same way as DCMs, recommended that, in considering the comparability of regulation, the CFTC explicitly incorporate that it may rely on the totality of the regulation—self and governmental—of the FBOT in evaluating the FBOT for comparable comprehensive supervision and regulation. The Commission has determined to adopt the rule as proposed, but notes that consistent with this Eurex comment, the Commission will rely on the totality of the regulation of the FBOT and its clearing organization in evaluating whether they are subject to comparable comprehensive supervision and regulation.

(ii) Comparability Reviews

FOA expressed concern that the proposed registration regulations would change the approach to comparability used under the existing no-action review process into what is effectively a rules-equivalence approach and that this could lead to a ''line by line'' examination of the European Union's approach to the regulation of derivatives transactions, central counterparties and trade repositories. FOA commented that a ''line by line'' examination of the foreign regulator's approach would complicate cross-border business and increase the risk of inadvertent breaches.

The Commission has determined to adopt the rule as proposed. As in the case of the review performed under the no-action review process, the Commission's determination of the comparability of the foreign regulatory regime to which the FBOT applying for registration is subject will not be a ''line by line'' examination of the foreign regulator's approach to supervision of the FBOTs it regulates. Rather, it will be a principles-based review conducted in a manner consistent with the part 48 regulations pursuant to which the Commission will look to determine if that regime supports and enforces regulatory objectives in the oversight of the FBOT and the clearing organization that are substantially equivalent to the regulatory objectives supported and enforced by the Commission in its oversight of DCMs and DCOs.

(iii) Limitations of Comparability Reviews

CME Group suggested that the Commission's analysis should be more narrowly tailored and that the Commission should limit its inquiry to questions regarding the comparability of the regulatory regime in the FBOT's home jurisdiction, focusing on (1) the regulatory regime in the FBOT's home jurisdiction, (2) the FBOT's status in its home jurisdiction and its rules and enforcement thereof, and (3) any existing information-sharing agreements between the FBOT, the Commission, and the home jurisdiction regulator. CME Group argued that such an approach would focus the Commission's attention on the legitimacy of the home regulator rather than on the broader inquiries that have informed the no-action process.

The Commission has determined to adopt the rule as proposed. The Commission does not believe that its review of an FBOT seeking to provide direct access to its trading system to persons located in the U.S. should be

[34] Eurex, FOA, LME, EEX, OMX, Better Markets, and CME Group.

[35] LME and EEX. EEX commented that all trading venues recognized as a ''Regulated Market'' under the European Union's (EU) Markets in Financial Instruments Directive (MiFID) should be deemed fit to meet the regulatory standards of a registered FBOT. LME commented that the Commission should take the same jurisdictional approach with respect to the review of clearing organizations.

[36] The proposed rules included an appendix that identified the information required in, and provided guidelines for submitting, an application for registration as an FBOT. That appendix included detailed descriptions of the minimum required documentation and information that should be included in an application. In these final rules, the Commission has revised the proposed appendix to include the submission requirements identified therein in standardized application forms, Form FBOT and Supplement S–1 to Form FBOT. Form FBOT is to be completed by an FBOT applying for registration and Supplement S–1 is to be completed by the clearing organization affiliated with the FBOT. The substance and content of Form FBOT and Supplement S–1 are parallel to those requirements and guidelines that were originally included in the appendix to the proposed rules.

[37] Notwithstanding the above, in a situation where an FBOT applying for registration is located in the same jurisdiction and subject to the same regulatory regime as a registered FBOT, the Commission believes that it would be acceptable for the FBOT applying for registration to include by reference, as part of its application, information about the regulatory regime that is posted on the Commission's Web site. The FBOT applying for registration must specifically identify the applicable information and certify that the information thus included in the application is directly applicable to it and remains current and valid.

restricted to the three areas suggested by the commenter. The Commission believes that the broader review contemplated by the proposed regulations, which is an outgrowth of the review conducted during the no-action process, is necessary to ensure the protection of persons located in the U.S. that will be trading by direct access on the FBOT. Accordingly, the final regulations continue to require the FBOT to provide sufficient information and to demonstrate that the registration requirements set forth in § 48.7 are satisfied (*e.g.,* information and documentation on the relevant membership standards, the contracts to be made available in the U.S. and the automated trading and clearing and settlement systems). The Commission believes that its review of the information and documentation provided in these areas is necessary to provide greater assurance that, among other things, the members of the FBOT and its clearing organization members are subject to appropriate standards, the contracts to be made available are not readily susceptible to manipulation, all linked contracts are identified, the trading system complies with the Principles for Screen-Based Trading developed by the Technical Committee of the International Organization of Securities Commissions (IOSCO Principles) [38] and produces an adequate audit trail, and the clearing and settlement systems satisfy appropriate standards.

(iv) Reconfirmation and Withdrawal of Registration

Better Markets commented that proposed § 48.8(a)(2)(iii), which would impose continuing requirements on the foreign regulatory structure to maintain its laws governing the FBOT, was too narrow and too focused on the letter of the law, rather than the realities of the marketplace. Better Markets proposed an annual reconfirmation and demonstration of the appropriateness of the FBOT's regulatory regime and, further, that an FBOT's registration should be discontinued if the foreign regulatory regime changes in ways such that the FBOT would not be able to qualify for initial registration.

The Commission has determined to adopt the rule as proposed, with slight modifications. The Commission notes that the regulations contain multiple provisions designed to demonstrate that the FBOT continues to be subject to an appropriate regulatory regime. For example, § 48.8(a)(1) conditions continued FBOT registration upon the FBOT's and its clearing organization's satisfaction of all of the registration requirements set forth in § 48.7; § 48.8(a)(2)(i) conditions registration upon the FBOT continuing to satisfy the criteria for a regulated market or licensed exchange pursuant to the regulatory regime described in its application and continuing to be subject to oversight by the regulatory authorities described in the registration application; § 48.8(a)(2)(ii) imposes a similar condition with respect to the FBOT's clearing organization; § 48.8(a)(2)(iii) conditions registration upon the laws, systems, rules, and compliance mechanisms of the regulatory regime applicable to the FBOT continuing to require the FBOT to maintain fair and orderly markets, prohibit fraud, abuse, and market manipulation, and provide that such requirements are subject to the oversight of appropriate regulatory authorities; and § 48.8(a)(3) conditions continued registration upon the FBOT's and, if the FBOT's clearing organization is not a DCO, the clearing organization's satisfaction of certain internationally recognized standards.

In addition, § 48.8(b)(1)(iii)(G) requires that the FBOT and its clearing organization, or their respective regulatory authorities, as applicable, provide to the Commission annually a written description of any material changes to the regulatory regime to which the foreign board of trade or the clearing organization is subject that have not been previously disclosed or a certification that no material changes have occurred. Further, proposed § 48.9(b)(2) provides that the Commission may revoke an FBOT's registration, after appropriate notice and an opportunity for a hearing, if there is a material change in the regulatory regime applicable to the FBOT or its clearing organization. The Commission has modified § 48.9(b)(2) to provide that the Commission may revoke an FBOT's registration, after appropriate notice and an opportunity to respond, if there is a material change in the regulatory regime applicable to the FBOT or its clearing organization such that the regulatory regime no longer satisfies any registration requirement or condition for registration applicable to the regulatory regime. The Commission believes that in this instance, as in other instances in the final rule where the FBOT is provided appropriate notice by the Commission of an issue about which it is expected to communicate with the Commission, an opportunity to respond is adequate for the purpose of addressing the issue.

c. International Standards

The requirements for and conditions of registration set forth in proposed § 48.7 and § 48.8, respectively, would require an FBOT and its clearing organization to observe specified international standards. In order to become registered, an FBOT would be required to successfully demonstrate that its trading system complied with the current IOSCO Principles.[39] Unless the FBOT's clearing organization is registered with the Commission as a DCO, the FBOT also would be required to demonstrate that the clearing organization observed: (1) The current Recommendations for Central Counterparties jointly issued by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of IOSCO, as updated, revised or otherwise amended, or (2) successor standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by CPSS and IOSCO's Technical Committee (RCCPs). OMX commented that, in order to provide more flexibility, the registration requirements should refer to ''recognized international standards,'' rather than specific international regulations.

The Commission has determined to adopt §§ 48.7(b)(1) and (d)(1) and § 48.8(a)(3) substantially as proposed. The use of a singular set of internationally recognized standards provides clarity, consistency and certainty to the application requirements and the standards

[38] The IOSCO Principles were formulated by eight jurisdictions which comprised Working Party 7 (Working Party) of the Technical Committee of IOSCO under the chairmanship of the Commission. The Working Party's mandate included, among other things, the identification of issues related to screen-based trading systems for derivative products. In considering the special concerns for screen-based trading systems, the Working Party identified and addressed the following issues: transparency, order execution algorithms, operational issues, security and system vulnerability, access, financial integrity, disclosure, and the role of system providers, and articulated for each issue a broad principle to assist regulatory authorities in overseeing screen-based trading systems. The IOSCO Principles were adopted by IOSCO on November 15, 1990 and set out in broad terms the international consensus as to the regulatory considerations to be addressed in reviewing mechanisms for cross-border screen-based trading. The Commission adopted the IOSCO Principles as a statement of regulatory policy for the oversight of screen-based trading systems for derivative products. *Policy Statement Concerning the Oversight of Screen-Based Trading Systems.* 55 FR 48670 (Nov. 21, 1990).

[39] A review of the FBOT requests for no-action relief to permit direct access reveals that most of the applicants stated that their regulatory authority has endorsed the IOSCO Principles. Several of the FBOTs indicated that that their regulatory authority, in its review of the FBOT's trading system during development and/or on an ongoing basis, specifically took into account the IOSCO Principles.

identified in the proposal are directly relevant to the review to be afforded FBOTs and their clearing organizations. In addition, due to the breadth of participation by sponsoring organizations [40] and the approval of the standards by IOSCO and CPSS, these principles are considered the premier standards in the industry and are likely to have greater global recognition than similar regional standards.

The Commission did not receive comments specifically related to the requirement that an FBOT's clearing organization observe any ''successor standards, principles and guidance'' to the current RCCPs that may be jointly issued by CPSS and IOSCO in the future. The Commission wishes to clarify, however, that such standards would include, to the extent applicable, the ''Principles for Financial Market Infrastructures'' (FMI Principles) [41] that CPSS and the IOSCO Technical Committee intend to finalize in early 2012 and that, when effective, would replace the current RCCPs as the CPSS/IOSCO standards applicable to central counterparties. In March 2011, CPSS and the IOSCO Technical Committee publicly issued a ''Consultative Report'' that included the then-current draft of the FMI Principles and that requested comment upon the draft by July 29, 2011. CPSS and the IOSCO Technical Committee are in the process of reviewing the comments received and finalizing the FMI Principles. The Commission would not expect an FBOT's clearing organization to observe the FMI Principles until the effective date thereof established by CPSS and IOSCO. However, because it is anticipated that several FBOTs may wish to apply for registration between the time that the final FMI Principles are published and the time that the FMI Principles become effective and that clearing organizations for FBOTs may find that they already observe the FMI Principles, an FBOT that applies for registration after the FMI Principles are published in final form may demonstrate that its clearing organization observes those principles in lieu of demonstrating observance of the RCCPs.

d. Clearing Standards

The FBOT registration requirements set forth in proposed § 48.7 include certain substantive standards that would have to be satisfied by an FBOT's clearing organization or the FBOT itself, if it is performing its own clearing functions. Among other things, an FBOT would be required to demonstrate that the members of its clearing organization are fit and proper and meet appropriate financial and professional standards; that the clearing organization is registered with the Commission as a DCO or observes the RCCPs or successor standards; that the clearing organization is in good regulatory standing in its home country jurisdiction; that the regulatory authorities governing the activities of the clearing organization provide comprehensive supervision and regulation comparable to that provided by the Commission to DCOs and engage in ongoing supervision and oversight of the clearing organization; that the clearing organization has the capacity to detect, investigate and sanction persons who violate its rules; and that the clearing organization has sufficient compliance staff and resources.

(i) DCOs

LME and CME Group commented that if an FBOT's clearing organization is registered with the Commission as a DCO, the FBOT should not be required to establish that the clearing organization satisfies the remaining criteria set forth in the proposed regulation. The Commission has determined to adopt the approach suggested by the commenters. Much of the criteria set forth in § 48.7 are likely to have been reviewed in connection with the clearing organization's application for a registration as a DCO and any additional review would be redundant. Accordingly, proposed § 48.7 has been modified to reflect that the registration requirements applicable to an FBOT's clearing organizations may alternatively be demonstrated by a statement from the clearing organization that it is registered and in good standing with the Commission as a DCO.

(ii) RCCPs Standards for Non-DCOs

Certain commenters questioned the appropriateness of the proposal's requirement that clearing organizations that are not CFTC-registered DCOs would have to demonstrate compliance with the RCCPs. MX suggested that the Commission should instead require the clearing organization to demonstrate that the regulations, standards, and policies of the applicable foreign regulator are comparable to those of the Commission; ICE suggested that the CFTC should rely on the expertise of the foreign regulator to regulate its own clearing organizations. As noted above, OMX recommended that the registration requirements permit clearing firms to demonstrate that they satisfy certain recognized international standards for central counterparties, rather than referring specifically to the RCCPs. By contrast, Eurex suggested that the inquiry into a firm's clearing organization should be restricted to a demonstration that the RCCPs are satisfied.

NYX suggested that if the proposed RCCP standard is adopted, the CFTC should obtain confirmation of that fact from the firm's home country regulator, in lieu of requiring the information from the clearing organization itself. Bursa Derivatives suggested that the Commission should clarify that a clearing organization's reasons for non-compliance with certain RCCPs would be considered by the Commission and asked whether a time period would be specified for the clearing organization to comply with all of the RCCPs in such instance.

The Commission has determined to adopt §§ 48.7(d)(1) and 48.8(a)(3)(ii) substantially as proposed. As noted above, the Commission believes that requiring an FBOT's clearing organization to demonstrate that it observes a singular set of internationally recognized standards provides clarity, consistency and certainty to the application requirements. Such representations also enable the Commission to obtain assurance that the clearing organizations used by the FBOTs observe, among other things, appropriate criteria for participation; measurement and management of credit exposures; management of custody, investment and operational risk; margin; financial resources; default procedures; governance; and transparency without specifically requiring the clearing organizations to demonstrate compliance with requirements that are identical to those that would be

[40] The current RCCPs were finalized in 2004 by a CPSS–IOSCO Task Force that included representatives from the following entities: National Bank of Belgium; Comissão de Valores Mobiliários, Brazil; People's Bank of China; Czech National Bank; European Central Bank; Autorité des Marchés Financiers, France; Bank of France; Deutsche Bundesbank; BaFin (German Financial Services Authority); Securities and Futures Commission, Hong Kong; Reserve Bank of India; Securities and Exchange Board of India; Commissione Nazionale per le Società e la Borsa, Italy; Bank of Japan, Financial Services Authority, Japan; Malaysian Securities Commission; Bank of Mexico; Netherlands Authority for Financial Markets; Saudi Arabian Monetary Agency; Comisión Nacional del Mercado de Valores, Spain; Monetary Authority of Singapore; Bank of England; Financial Services Authority, United Kingdom; Securities and Exchange Commission; CFTC; Board of Governors of the Federal Reserve System; Federal Reserve Bank of New York; International Monetary Fund; and the World Bank. The recommendations were initially released in a consultative document that requested public comment. The final version incorporates consideration of the comments received from central banks, regulators and the operators of and participants in central counterparties.

[41] Not all of the FMI Principles are applicable to central counterparties.

imposed upon a DCO. The use of an international standard that is substantially similar, though not identical, to the requirements imposed upon U.S. registrants is consistent with the directive in CEA section 4(b)(1)(A)(i) that the Commission consider whether the relevant regulatory regime is ''comparable'' and ''comprehensive.'' It is also consistent with section 752 of the Dodd-Frank Act, which seeks to promote consistency in global regulation of swaps and futures contracts and the requirement set forth in §§ 48.7(b)(1) and 48.8(a)(3)(i) that the FBOT itself comply with the IOSCO Principles. The RCCPs were developed with broad participation and comment from entities from multiple nations and have been approved by both IOSCO's Technical Committee and the CPSS. The same will be true of the FMI Principles, when finalized. Accordingly, the Commission believes that the RCCPs and their successor standards are the appropriate criteria to use when reviewing an FBOT's clearing organization that is not registered as a DCO.

The Commission notes that the RCCPs consist of recommendations that are expressed as general principles, explanations thereof, and key issues and questions to be considered when assessing observance of the recommendations, rather than a checklist of obligations to be reviewed. The Commission recognizes that the generality of the recommendations and the explanations thereof afford some flexibility in assessing a clearing organization's observance thereto. The Commission anticipates that, for purposes of an FBOT registration application, clearing organizations may demonstrate observance of individual RCCPs, as well as observance of the RCCPs as a whole, in a variety of ways.[42]

CPSS and IOSCO encourage relevant national authorities to assess observance of the RCCPs by the central counterparties in their jurisdictions as well as RCCP assessments by international financial institutions (*i.e.,* the International Monetary Fund and the World Bank) as part of their Financial Sector Assessment Programs. The Commission anticipates that a similar approach will be taken with regard to the FMI Principles. The Commission encourages FBOT registration applicants to submit with their registration applications any such assessments that have been made of their clearing organizations and any other information from their home country regulator(s) (provided that submitting such assessments to the Commission is not inconsistent with any applicable laws of the home country) that would be relevant to a determination that the clearing organization observes the RCCPs. Such assessments will inform the Commission's review of the clearing portion of the application. Due to the generality of the RCCPs, however, the Commission believes that a certification from a regulatory authority that the clearing organization observes the RCCPs, without more, would not provide it with sufficient information as to the relevant clearing operations to adequately assess the FBOT application and, thus, would not be sufficient to demonstrate that the RCCP requirement is met.

With respect to Bursa Derivatives' request that the Commission consider a clearing organization's reasons for non-compliance with certain RCCPs, the Commission generally believes that a registered FBOT's clearing organization should be able to represent that it observes the RCCPs or successor standards. However, the Commission recognizes that a clearing organization may have very unique factual circumstances that may warrant an exception to the requirement with respect to a limited scope of RCCPs. Accordingly, the Commission would, where circumstances warrant, entertain applications from FBOT's whose clearing organizations do not observe all of the RCCPs.

e. Foreign Regulation of FBOT Participants

In the proposed rules, the Commission specifically asked for comment as to whether, to the extent an FBOT is permitted to list swaps, the Commission should examine the regulatory oversight of relevant market participants (*e.g.,* the functional equivalents of swap dealers (SD) and major swap participants (MSP)) in the applicable foreign jurisdictions when making a determination as to the comparability and comprehensiveness of the supervision and regulation of the relevant regulatory regime. Three commenters addressed the issues related to market participants. Better Markets commented that ''[s]uch examination is critical * * * [and must include an assessment of] rules relating to collateral, business conduct and trading behavior.'' It noted that ''SDs and MSPs are subject to rigorous standards because safeguards for these important market participants enhance the continued financial integrity of the marketplace.'' Better Markets further argued that the requirements for the foreign equivalents of SDs and MSPs should be the same as or equivalent to those imposed by the Dodd-Frank Act. In contrast, ICE commented that requiring equivalent or comparable regulation of foreign swap dealers or major swap participants is premature, positing that the proper course is for the CFTC to ''work with foreign regulators to ensure high-level comparable regulation of market participants.'' As previously noted, FOA expressed concern that this type of analysis could easily lead to a ''line by line'' examination of the EU's approach to the regulation of derivatives transactions, central counterparties and trade repositories, which would complicate cross-border business and increase the risk of inadvertent breaches of rules.

The Commission has determined that it would not be appropriate, in the context of this rulemaking, when making a determination as to the comparability and comprehensiveness of the supervision and regulation of the relevant regulatory regime with respect to the registration of an FBOT, to require examination of the regulatory oversight of SDs and MSPs in the applicable home country jurisdictions. CEA section 4(b) applies with respect to FBOTs that wish to provide for direct access and the CEA section 4(b)(1)(A)(i) standard of review to be applied is ''whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country.'' The Commission believes that the review standard is thereby appropriately focused on an FBOT's operations, including its clearing organization, and its regulatory authority. Thus, the appropriate review here is to examine the FBOT's membership and trading participant standards as they relate to trading on the FBOT. If such membership and/or trading participant standards have been determined to be adequate by the FBOT's regulatory authority, which has been determined to provide comparable, comprehensive supervision and regulation of the FBOT, any further participant review would be beyond the scope of CEA section 4(b).

[42] The Commission expects to take a similar approach with respect to the FMI Principles, when finalized. As currently drafted, the FMI Principles will include general principles, key considerations that explain the general principle, and explanatory notes that discuss the objective and rationale behind the principle and that provide guidance on how the standards expressed therein can be implemented. In some cases, annexes will provide additional information and guidance. When published, the document also will be accompanied by an assessment methodology.

3. Contracts

a. Linked Contracts

(i) Definition

Proposed § 48.2(d) defined a linked contract as ''a futures or option or swap contract made available for direct access from the United States by a registered foreign board of trade that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity as defined in section 1a(40) of the Act.'' [43] Three commenters requested clarification with respect to this definition.[44] NGX requested that the Commission clarify the definition of linked contract to take into account the nuanced distinction between (1) contracts which are settled against the settlement price of a contract listed for trading on a U.S. contract market and (2) basis contracts, the prices of which are merely quoted with reference to another market. Better Markets commented that the definition of linked contract is far too narrow, and argued that it should include contracts that are reasonably likely to influence prices of the DCM/SEF-traded contracts as well as contracts that directly reference the prices of DCM/SEF-traded contracts. LME requested clarification on the scope of the definition of linked contract, commenting that LME did not believe the definition captured any contract of the type traded on LME.

The Commission has determined to adopt the definition in § 48.2(d) substantially as proposed. The definition of linked contract leading to the requirement to impose additional conditions on such contracts is based upon the statutory description of linked contracts found in CEA section 4(b)(1)(B).[45] With respect to contracts that do not meet the definition of linked contracts, the proposal provided that applicants must identify contracts that share any other commonality (changed to relationship in the final rule) with a contract listed for trading on a registered entity— for example, if both the FBOT's and the registered entity's contracts settle to the price of the same third party-constructed index. With respect to these types of contracts, as with all conditions of registration, the final rule provides that the Commission, in its discretion and after appropriate notice and opportunity to respond, may impose additional conditions on the registered FBOT. Such additional conditions would be imposed if deemed necessary by the Commission to maintain its ability to carry out its market surveillance responsibilities when faced with contract relationships that essentially create a single market for the contracts listed by the FBOT and the registered entity and could include, among others, the conditions applicable to the listing of a linked contract.

(ii) Conditions

Proposed § 48.8(c) applied certain additional specified conditions for FBOTs that make linked contracts available by direct access. [46] The conditions included in § 48.8(c)(1), as set forth in CEA section 4(b)(1)(B), included: (1) Making public daily trading information regarding the linked contract that is comparable to the daily trading information published for the contract to which it is linked; (2) adopting position limits for the linked contract that are comparable to the position limits adopted by the registered entity for the contract to which it is linked; (3) having the authority to require or direct any market participant to limit, reduce, or liquidate any position; (4) agreeing to promptly notify the Commission of certain changes with respect to the linked contract; (5) providing information to the Commission regarding large trader positions in the linked contract that is comparable to the large trader position information collected by the Commission for the contract to which it is linked; and (6) providing the Commission such information as is necessary to publish reports on aggregate trader positions for the linked contract that are comparable to such reports on aggregate trader positions for the contract to which it is linked.

The other conditions on linked contracts, set forth in § 48.8(c)(2), are based on the second set of additional conditions the Commission imposed on the no-action relief issued to ICE Futures Europe when that exchange made available for trading by direct access certain contracts in energy commodities linked to the prices of contracts traded on NYMEX.[47] The conditions would require that the FBOT, among other things, (1) inform the Commission in a quarterly report of any member that had positions in a linked contract above the applicable FBOT position limit, (2) provide trade execution and audit trail data for input to the CFTC's Trade Surveillance System (TSS), (3) provide for CFTC on-site visits for the purpose of overseeing the FBOT's and the clearing organization's ongoing compliance with registration requirements and conditions, (4) provide, at least one day prior to the effective date, copies of, or hyperlinks to, all rules, rule amendments, circulars and other notices published by the FBOT with respect to all linked contracts, (5) provide copies of all disciplinary notices involving the FBOT's linked contracts, and (6) promptly take similar action with respect to its linked contract in the event that the CFTC, pursuant to its emergency powers authority, directs that the U.S. registered entity which lists the contract to which the FBOT's contract is linked to take emergency action with respect to a linked contract (*e.g.,* to reduce positions in or cease trading in the contract).

Five commenters addressed these additional conditions.[48] With respect to linked contracts and position limits, LME, noting that foreign markets may well implement restrictions that could be more effective than position limits in addressing the regulatory objectives to be addressed by position limits, suggested that FBOTs should be permitted to adopt the position limits of a linked market as a safe harbor, but that the CFTC should also permit applicants to submit for approval any alternative approach that the Commission determines to be comparable in result. OSE argued that the proposed additional conditions for linked contracts are only necessary when an FBOT has more than a *de minimis* amount of trading in a linked contract.

OSE also noted that the burdens associated with proposed § 48.8(c)(2) may be overly costly and could be narrowed. Specifically, OSE commented on proposed § 48.8(c)(2)(ii), which would require that the FBOT provide trade execution and audit trail data on

[43] Registered entity is defined in CEA section 1a(40) to mean: (A) A board of trade designated as a contract market under section 5 of the Act; (B) a derivatives clearing organization registered under section 5b of the Act; (C) a board of trade designated as a contract market under section 5f of the Act; (D) a swap execution facility registered under section 5h of the Act; (E) a swap data repository registered under section 21 of the Act; and (F) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded.

[44] NGX, Better Markets, and LME.

[45] The Commission does not believe that any LME contract currently made available for direct access under LME's no-action relief, all of which settle against prices generated by the LME, would fall into that definition.

[46] Under the proposed regulations, the requirements to register and to comply with the conditions for making available linked contracts are applicable only to those FBOTs which make such contracts available through direct access. The registration and linked contract provisions of the final rule do not extend to FBOTs that do not provide direct access to the FBOT's trade matching system from the U.S.

[47] *See* CFTC Letter No. 09–37 (August 20, 2009).

[48] LME, OSE, Senator Carl Levin, CMOC and ATA.

a linked contract for input into the TSS on a routine basis by the day following the trade date. OSE suggested that the Commission assess the relative burdens of the requirement and whether it could achieve the regulatory purpose through a more targeted requirement, such as requiring the data on an ''as necessary'' rather than on a daily basis. OSE also expressed concern about proposed § 48.8(c)(2)(vi), which would require the FBOT, in the event that the Commission directs that the registered entity that lists the contract to which the FBOT's contract is linked take emergency action with respect to a linked contract, subject to information-sharing arrangements between the Commission and its regulatory authority, to promptly take similar action with respect to the its linked contract. OSE suggested that it is preferable for the Commission to coordinate the actions that the FBOT should take in response to a market disruption or event through the FBOT's regulator, in recognition of international comity.

Two commenters, Senator Carl Levin and ATA, strongly supported the proposed linked contract conditions, both specifically identifying the requirement that the FBOT share its trade execution and audit trail data, as well as the position limit provisions. Senator Levin commented that sharing trading data is vital for the Commission to detect price manipulation and excessive speculation involving U.S. futures traded on foreign exchanges. Further, Senator Levin noted that he believed the linked contract provisions would help to close the ''London loophole'' (a scheme, whereby, according to Senator Levin, traders move their trading activity to foreign markets to avoid position limits set by U.S. exchanges) by ensuring that the Commission is able to police FBOT trading in U.S. commodities to stop excessive speculation, price manipulation, and market disruptions. CMOC encouraged the CFTC to require that the FBOT impose position limits that are at least equal to or lower than the limits to be imposed in the U.S. on registered entities under the Dodd-Frank Act.

The Commission has determined to adopt § 48.8(c) substantially as proposed. The first set of conditions for linked contracts, found in § 48.8(c)(1) are statutory-based conditions which are specifically required by the CEA section 4(b)(1)(B). The second set of conditions for linked contracts, found in § 48.8(c)(2), as previously noted, represent the second group of additional conditions the Commission imposed on the no-action relief issued to ICE Futures Europe when that exchange made available for trading by direct access contracts linked to the prices of contracts traded on NYMEX. These conditions remain necessary because such linkages create a single market for the subject contracts and, in the absence of certain preventive measures at the FBOT, could compromise the Commission's ability to carry out its market surveillance responsibilities. Because of the linkage, the trading of the linked contracts on an FBOT potentially affects the pricing of contracts traded on registered entities.

With respect to the proposed § 48.8(c)(2)(ii) trade execution and audit trail data on a linked contract reporting requirement, the Commission has considered comments urging the Commission to require the data on an ''as necessary'' rather than on a daily basis and has determined that the timely provision of such information is essential if the Commission is to adequately carry out its trade practice and market surveillance responsibilities with respect to the linked contract listed on the registered entity. Commission staff conducts surveillance and reviews the trading data on a daily basis, and the trade data from the FBOT's linked contract are a critical component of this surveillance. With respect to the proposed § 48.8(c)(2)(vi) coordinated emergency action requirement, the Commission believes that the timeliness of any required emergency action, which would be taken only if necessary to protect the market and the public, is critical and outweighs the benefit that would be derived from coordinating actions through the FBOT's regulator. The Commission notes that the requirement to take emergency action is an extremely rare event and, in the normal course of business, the Commission would, time permitting, coordinate with the FBOT's regulator regarding critical actions to be taken concerning a linked contract.

The Commission has determined to modify the second set of conditions on linked contracts by moving the requirement in proposed § 48.8(c)(2)(iii), which provided for CFTC on-site visits for the purpose of overseeing the FBOT's and the clearing organization's ongoing compliance with registration requirements and conditions, to § 48.8(a)(8), thus making it a general condition for maintaining registration.

b. Swaps and Other Contracts

(i) Swaps

Under proposed § 48.7(c)(1)(i), a registered FBOT would be permitted to provide direct access to futures, options, and swap contracts that would be eligible to be listed for trading on a DCM. Five commenters supported permitting the execution of swaps on an FBOT by persons located in the U.S. by direct access.[49] Eurex, for instance, commented that the Commission should permit FBOTs to provide trading access to qualified U.S. persons for trading swaps that are listed on the FBOT, noting that the currently proposed conditions on FBOTs would be sufficient for them to comply with the purposes of the Dodd-Frank Act regarding swap trading.

The Commission has determined to adopt the rule as proposed. The Commission notes, however, that the regulations would only permit an FBOT to make swaps available to persons located in the U.S. for trading by direct access after the FBOT, its clearing organization, and the swaps to be made available by direct access have been determined by the Commission to be subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the FBOT's home country. Moreover, only swaps that would be permitted to be traded on a DCM could be made available, all such traded swaps would be required to be cleared, and the parties trading such swaps would be required to satisfy FBOT membership/trading participant standards that would have been reviewed and approved by the FBOT's regulatory authority.[50]

Registered FBOTs that permit swaps to be traded by direct access would also be subject to additional conditions, including the requirement to ensure that all swap transaction data, including price and volume, are timely reported as soon as technologically practicable after execution of the swap transaction to a

[49] Eurex, ICE, NGX, MX, and BG.

[50] The Commission notes that its decision to permit registered FBOTs to make swaps available via direct access to persons located in the U.S. is guided in part by the fact that the Dodd-Frank Act permits swaps to be listed for trading on a DCM and the FBOTs that are eligible to be registered are defined by § 48.2(b) as FBOTs that possess the attributes of an established, organized exchange. This definition was intended to restrict FBOT registration eligibility to entities similar in nature to those that received direct access no-action relief in the past (*e.g.,* entities that are comparable in operation and regulation to registered DCMs). Moreover, there is nothing in the Dodd-Frank Act, including section 738 of the Dodd-Frank Act amending section 4(b) of the Act, which expressly precludes a registered FBOT from offering swaps through direct access. However, the Commission also believes that the terms and conditions of any swap contract to be made available to persons located in the United States through direct access must demonstrate that such contract would meet review standards similar to those of a swap to be listed on a DCM and must demonstrate that the contract is not one that a U.S. person would be prohibited from trading.

swap data repository (SDR) that is either registered with the Commission or has an information-sharing arrangement with the Commission. Additionally, the FBOT must agree to coordinate with the Commission with respect to arrangements established to address cross market oversight issues involving swaps trading, including surveillance, emergency actions, and the monitoring of trading. Finally, based on its experience in administering these FBOT registration provisions and other rules related to swaps trading, the Commission may, in its discretion and after notice and an opportunity to respond, impose additional conditions upon the FBOT's registration with respect to the listing of swaps contracts.

(ii) Clearing of Swaps

Under proposed § 48.7(c)(1)(ii), all contracts that could be made available to be traded by direct access, including swaps, would be required to be cleared. ICE, BG Americas, and NGX opposed the mandatory clearing requirement for swaps. ICE commented that the clearing mandate contained in the proposed regulations differed from the clearing requirements applicable to swaps transactions on U.S. markets. Specifically, transactions executed on a swap execution facility (SEF) would not be required to be cleared if such transactions were not subject to the mandatory clearing requirements set forth in the Act. NGX noted that end users executing swaps on SEFs would be exempt from the mandatory clearing requirements pursuant to section 2(h)(7) of the Act. Similarly, BG Americas commented that the mandatory clearing standard applicable to transactions executed on an FBOT would be higher than that applicable to U.S. exchanges, in light of the available exemptions from the clearing requirement in the CEA, and recommended that the Commission clarify in the final rule that the mandatory clearing requirements on FBOTs will be no different from the clearing requirements on U.S. exchanges.

The Commission has determined to adopt § 48.7(c)(1)(ii) as proposed. All three commenters supported their view by referencing the clearing standards applicable to transactions executed on SEFs, not on DCMs. As stated above, both the proposed and final § 48.2(b) restrict the universe of FBOTs that are eligible to be registered under part 48 to those that possess ''the attributes of an established, organized exchange or other trading facility.'' This provision is intended to limit FBOT registration eligibility to the types of entities to which direct access no-action relief has been granted in the past (*e.g.,* entities that are comparable in operation and regulation to registered DCMs). Accordingly, the Commission believes that the treatment of swaps that registered FBOTs will make available for trading to members and other participants located in the U.S. through direct access should parallel the treatment afforded to swaps transactions that may be traded on DCMs.

The CEA requires swaps transactions that are traded on a DCM to be cleared. Specifically, CEA section 5(d)(11) includes DCM Core Principle 11, ''Financial Integrity of Transactions,'' which requires a board of trade to establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearing and settlement of transactions with a DCO). Accordingly, the Commission believes that it is appropriate to require that all transactions (including swaps) that are eligible to be traded by direct access pursuant to an FBOT registration be cleared.

(iii) Swaps Data Reporting

Under proposed § 48.8(a)(9)(i), a registered FBOT permitting swaps to be traded by direct access would be required to report to the public, on a real-time basis, data relating to each swap transaction, including price and volume, as soon as technologically practicable after execution of the swap transaction. Under proposed § 48.8(a)(9)(ii), a registered FBOT permitting swaps to be traded by direct access would be required to ensure that all swap transaction data is timely reported to an SDR that is either registered with the Commission or has an information-sharing arrangement with the Commission.

Two commenters addressed these reporting requirements. ATA expressed concern about the effect of real-time reporting on their members' ability to hedge and recommended that this requirement be revised to allow delayed reporting to permit counterparties to close their related transactions. ICE expressed the view that the CFTC should not require all FBOTs to report swaps transactions to an SDR.[51]

The Commission has determined to retain both reporting requirements, but to modify the proposed rule with respect to the responsibility for real-time reporting of swaps transaction information to the public. The Commission recognizes that the real-time reporting of swaps information to the public and the reporting of swaps transactions to an SDR are key objectives of the Dodd-Frank Act. Real-time reporting enhances price discovery. Reporting swaps transactions is necessary to permit the Commission and other regulatory authorities to view the market as a whole. As previously stated, § 48.2 is intended to restrict the universe of FBOTs that are eligible to be registered under part 48 to those entities that are comparable in operation and regulation to registered DCMs. The Commission anticipates that DCMs will be required to ensure that all swap transaction data, including price and volume, are timely reported to an SDR after execution of the swap transaction. Real-time swap transaction and pricing data will then, in turn, be publicly disseminated by the SDR. Accordingly, the Commission has determined to limit the registered FBOT reporting requirements contained in § 48.8(a)(9)(i) to an obligation to ensure that all transaction data relating to each swap transaction, including price and volume, be reported to an SDR that is registered with the Commission or has an information sharing arrangement with the Commission.

The Commission is aware that no SDRs are either registered or operational at this time. Accordingly, until such time as appropriate SDR operations are in place, the conditions contained in Orders of Registration issued to FBOTs that wish to permit members and other participants to trade swaps via direct access will indicate that the FBOT may list such swaps for direct access but will be required to comply with § 48.8(a)(9)(i) as soon as practicable following the licensing or registration of a SDR that meets applicable requirements.

(iv) Contracts Other Than Futures, Options, and Swaps

Proposed § 48.7(c)(1)(i) provided that contracts that may be made available by direct access by a registered FBOT must be futures, option, or swaps contracts. LME and NGX requested clarification with respect to whether the proposed rules would permit an FBOT to offer spot and forward contracts and other similar physically-settled transactions. NGX also asked the Commission to clarify that, although the proposed regulations would permit a registered FBOT to list for trading through direct access any contract that is legally

[51] ICE noted that the SDR rules for domestic markets have not been finalized and SDRs are not yet operational and that, accordingly, the CFTC should delay implementation of this requirement until SDR rules are finalized and SDRs are operational. Further, the CFTC could rely on reporting to the CFTC from the FBOT, its clearing organization, or the foreign regulatory authority under an information-sharing arrangement.

offered in the U.S., only those contracts that are regulated under the Act would be within the scope of the FBOT registration provision.

The Commission has determined to adopt the rule as proposed. As stated in the proposal, those types of contracts subject to the CFTC's jurisdiction are within the ambit of the FBOT registration rules. The registration provisions do not preclude an FBOT from making available to participants located in the U.S. other products (*e.g.,* spot contracts and forward contracts) to the extent applicable law otherwise allows. The Commission also has determined to remove any reference to products from the FBOT definition set forth in § 48.2(a).

(v) Review of Contracts

Proposed § 48.7(c) would require that an FBOT, as part of its application for registration, provide, among other things, the terms and conditions of the futures, option and swaps contracts intended to be made available for direct access. Additionally, proposed § 48.10 would require a registered FBOT that wishes to offer new contracts subsequent to registration to submit such contracts to the CFTC for review prior to making the additional contracts available for trading by direct access. LME commented that the Commission should adopt an exemptive, rather than a registration, regime and require contract designation, similar to that applied by the Commission when a DCM submits a new contract for listing, only with respect to linked contracts.

The Commission has determined to adopt §§ 48.7(c) and 48.10 as proposed, modified to reflect newly adopted procedures, discussed below, applicable to the offer or sale, to persons in the U.S., of non-narrow-based security index futures and option contracts. The Commission believes that it is necessary to review the terms and specifications of all contracts before they are made available for trading by direct access to ensure that the contracts would be legally permitted to be traded on a DCM and otherwise conform to the requirements and conditions applicable to contracts listed on the FBOT for trading by direct access by persons located in the U.S. The Commission also believes that it is necessary and appropriate to review new contracts in order to, among other things, determine that the contracts are actually futures, option, or swap contracts; ensure that they are not contracts determined by the Commission pursuant to CEA section 5c(c)(5)(C)(i) to be contrary to the public interest; ensure that they are not contracts on such products as security futures or narrow-based stock indexes or other securities regulated by the U.S. Securities and Exchange Commission; and determine whether the contract is linked to or may otherwise have some impact on a contract traded on a CFTC-regulated entity. The Commission notes that the treatment of new products set forth in the proposed and final rules is consistent with the existing practice under the no-action regime. The Commission further notes that, in the past, Commission staff has attempted to complete its review of additional contracts proposed to be made available for direct access promptly. Thus, an FBOT's ability to bring such contracts to market quickly generally has not been impaired.

With respect to the listing of additional non-narrow-based security index futures and option contracts to be made available by direct access, proposed § 48.10 provided that a registered FBOT could list for trading such an additional futures contract pursuant to the procedures set forth in Appendix D to Part 30. Proposed § 48.10 also provided that a registered FBOT could, without further action by either the FBOT or the Commission, list for trading an additional option contract on a non-narrow-based security index futures contract which could be offered or sold in the United States pursuant to a no-action letter issued by the Commission's Office of the General Counsel. HKFE requested clarification with respect to any interrelationship between the proposed rules and the approval process for the offer and sale of index products to persons in the U.S.

The Commission has revised its procedures applicable to the offer or sale, to persons in the U.S., of a non-narrow-based security index futures contract traded on an FBOT to conform to recent amendments to its regulations.[52] Generally, the new procedures involve the issuance of a Commission certification rather than a no-action letter. Accordingly, § 48.7(c)(2) has been added and provides that foreign futures (and option contracts) on non-narrow-based security indexes must have been certified by the Commission pursuant to the procedures set forth in § 30.13, and § 48.10 has been updated and now provides that a registered FBOT may list for trading by direct access an additional futures (or option contract) on a non-narrow-based security index pursuant to the Commission certification procedures set forth in § 30.13(d) and Appendix D to Part 30. Further, with respect to option contracts, if the option is on a non-narrow-based security index futures contract which may be offered or sold in the United States pursuant to a Commission certification issued pursuant to § 30.13, the option contract may be listed for trading by direct access without further action by either the registered FBOT or the Commission.[53] In response to HKFE's query, the Commission notes that the Commission certification procedures for non-narrow-based security indexes and the FBOT registration procedures are independent of each other, with the exception that a registered FBOT applying for Commission certification to offer or sell to persons located within the U.S. a non-narrow-based security index contract may, in that same request, pursuant to § 30.13(k), request that such contract be made available for trading by direct access.

4. Direct Access Definition

Proposed § 48.2(c) defines direct access to mean ''an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade,'' which is identical to the definition provided in CEA section 4(b)(1)(A). LME and HKFE requested clarification of the definition.

LME requested clarification of the degree to which the definition covers access to application programming interfaces (API) developed by members to interface with exchange systems. LME indicated that it understood the direct access definition to include access to the graphical user interface of an FBOT, and not indirect access via an API. HKFE asked the Commission to clarify the meaning of ''explicit grant of authority'' and to provide examples of the kind of conduct or actions on the part of an FBOT that would be regarded

[52] *See Foreign Futures and Options Contracts on a Non-Narrow-Based Security Index; Commission Certification Procedures,* 76 FR 59241 (September 26, 2011).

[53] Upon the implementation date, regulations 48.7(c) and 48.10 supersede and replace the provisions included in the ''Notice of Revision of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade That Have Received Staff No-Action Relief to Provide Direct Access to Their Automated Trading Systems from Locations in the United States'' (71 FR 19877; April 18, 2006; corrected at 71 FR 21003, April 24, 2006) and the ''Notice of Additional Conditions on the No-Action Relief When Foreign Boards of Trade That Have Received Staff No-Action Relief To Permit Direct Access to Their Automated Trading Systems from Locations in the United States List for Trading from the U.S. Linked Futures and Option Contracts and a Revision of Commission Policy Regarding the Listing of Certain New Option Contracts,'' 74 FR 3570 (January 21, 2009).

as ''an explicit grant of authority.'' HKFE also requested that the CFTC clarify the position taken previously in connection with the granting of a direct access no-action letter that an automatic order routing connection from the U.S. to an FBOT would not be considered as ''direct access.'' Similarly, in relation to proposed § 48.8(a)(4), which addresses restrictions on direct access, ASX requested that the placement of terminals in non-exchange participant offices, and the conditions thereof, be specified in the new rules.

The Commission has determined to adopt the rule as proposed. Direct access is defined in the CEA and in the proposed and final regulations to mean an explicit grant of authority by an FBOT to an identified member or other participant located in the U.S. to enter trades directly into the trade matching system of the foreign board of trade. This means that the FBOT itself, and not its members or participants, has identified and permitted a member or participant to enter trades directly into the FBOT's order matching and trade entry system from the U.S. The electronic means of entry to the trading system may be through the internet, a dedicated closed electronic system, an API, or other type of electronic interface—the dispositive factor is that the order is transmitted by an identified member or other participant located in the U.S. and the order is entered directly into the trade matching system. Thus, it does not constitute direct access if the order is sent by a person in the U.S. by means of an automated order routing system (AORS) to an intermediary located outside of the U.S. for further action or to pass through an order entry or risk management filter at the intermediary prior to reaching the trade matching engine.

Proposed § 48.8(a)(4), which addresses restrictions on direct access, requires that the FBOT not provide, and take reasonable steps to prevent, third parties from providing direct access to the FBOT. This provision is intended to restrict direct access to FBOT-authorized persons by such methods as restricted access to hardware, password control, and other similar physical or electronic security measures. It is not intended to prohibit a registered FBOT from authorizing its member firms or other participants eligible to handle U.S. customer orders to permit their customers in the U.S. to access the trading system using the member firm's or participant's member ID (mnemonic) or password. In other words, a registered FBOT's member or participant located outside of the U.S. may, if so authorized by the FBOT, permit customers in the U.S. to transmit orders directly to the trade matching engine. The Commission is aware that two FBOTs currently operating with direct access no-action relief—ASX [54] and HKFE [55]—permit their exchange participants to allow non-exchange participants in the U.S. to have access to the exchanges' trading systems, subject to a guarantee from an exchange participant firm.

5. Scope of Registration (*i.e.,* CEA Sections 5 and 5a)

HKFE commented that there is no express provision in the proposed rules stating that registration under Part 48 would relieve an FBOT from compliance with CEA section 5 or 5a (that is, registering as either a DCM or DTEF). HKFE asked for clarification as to whether registration would relieve an FBOT from compliance with CEA section 5 or 5a.

The Commission has determined to adopt the rule as proposed. Registration with the Commission under the Part 48 regulations would relieve an FBOT from compliance with CEA section 5 and its requirement to register with the Commission as a DCM and comply with the core principles and regulations associated with DCMs to the extent that its activity within the U.S. is limited to permitting members and other participants located in the U.S. to have direct access to its trade matching system, subject to the terms and conditions of registration, and so long as it remains an FBOT. Of course, the registered FBOT could, alternatively, choose to comply with CEA section 5 and become a registered DCM, subject to the regulatory requirements applicable thereto. The Commission notes that CEA section 5a was repealed by the Dodd-Frank Act.

6. Registration Requirements and Conditions

Proposed § 48.7 identified certain requirements that must be satisfied by an FBOT seeking to register with the Commission. Proposed § 48.8 imposed various continuing conditions on registered FBOTs. Several commenters raised issues related to the proposed requirements and conditions.

a. Trading Rules

Proposed § 48.7(b) identified the attributes of the automated trading system that would be required to be met by any FBOT seeking to register with the Commission. In response to the proposal's request for comment with respect to whether the Commission should require FBOTs to adopt additional conditions to promote orderly markets and customer protection, such as automated safety features to protect against errors in the entry of orders, price-banding mechanisms, maximum order size limitations, or trading pauses to prevent cascading stop-loss orders, ICE commented that the Commission should not issue prescriptive trading rules for FBOTs and that the foreign regulator, not the CFTC, has the primary interest in adopting rules in this area. Further, ICE noted that the CFTC should work through international regulatory groups like IOSCO to implement consistent controls, instead of prescriptive rules.

The Commission has determined not to require, as a requirement for, or a condition of, registration, that FBOTs adopt such automated safety features. The Commission believes that the primary interest in adopting rules in this area remains with the foreign regulatory authority. The Commission believes that the trading system attributes described in and required by § 48.7(b), which include compliance with the IOSCO Principles for Screen-Based Trading, are adequate to ensure the FBOT's trading system, among other things, is fair, reliable, capable of responding to emergencies, provides an adequate audit trail, and provides for reporting of trade data. They are features common to all automated trading systems that staff has reviewed in the context of the no-action process.

b. Information Sharing

Proposed § 48.8(a)(6) imposed certain information sharing obligations on a registered FBOT and its clearing organization. NYX asserted that the CFTC should not seek to obtain information directly from a clearing organization. Rather, the CFTC should look to the exchange—which should always be able to provide all the information held by the clearing organization in relation to business conducted on that exchange. NYX also commented that some European clearing organizations have the status of banks (*e.g.,* LCH Clearnet SA), and so may find it difficult to share information directly with the Commission rather than through their regulators.

The Commission continues to believe that it would be appropriate and expedient to obtain information regarding the clearing function directly from the clearing organization, in lieu of relying upon intermediation by another entity. Nonetheless, with respect to the FBOT being better able to provide

[54] CFTC Letters No. 01–75 (July 30, 2001) and No. 04–32 (October 25, 2004).

[55] CFTC Letter No. 01–74 (July 30, 2001).

information requested of the clearing organization, the Commission notes that § 48.8(a)(6)(iii) provides that the FBOT and its clearing organization, as applicable, will provide information for certain purposes directly to the Commission. Accordingly, an FBOT could provide the information directly to the Commission, if it were better able to do so. Such information also could be provided by the applicable regulatory authority, although the FBOT and its clearing organization remain ultimately responsible to provide the information directly to the Commission under the final rule.

c. Submission of U.S.-Domiciled Entities to Service of Process

As a condition of registration, proposed § 48.8(a)(5) would require that certain members or other participants granted direct access by a registered FBOT (1) file a written representation with the Commission submitting to the CFTC's jurisdiction, (2) file a valid and binding appointment with the FBOT of an agent for service of process in the U.S., and (3) maintain a written representation with the FBOT that it will provide the Commission and other U.S. authorities with access to books and records and to the premises where the FBOT's trading system is made available in the U.S. LME questioned the need to require U.S.-based persons with direct access to foreign markets (FBOTs) that trade from the U.S. to comply with these three conditions. LME argued that in terms of personal jurisdiction, a U.S.-based person with direct access to an FBOT raises no more jurisdictional issues than a U.S.-based person trading on a U.S. market, as long as both traders are conducting their trading from the U.S.

Upon further review and consideration of the comments received, the Commission has determined that § 48.8(a)(5)(iii), which obligated a registered FBOT to require that each current and prospective member or other participant that is granted direct access pursuant to the FBOT's registration and that is not registered with the Commission as a FCM, a CTA or a CPO file with the FBOT a valid and binding appointment of a U.S. agent for service of process in the U.S., is not necessary. Accordingly, that section has been deleted from the final rule. However, the Commission has determined that the remaining two conditions applicable to members and participants should be adopted as proposed. The Commission believes these conditions remain necessary to ensure that the FBOT members and other participants that have been granted direct access to an FBOT's trading system knowingly consent to submit to the CFTC's jurisdiction and to provide the Commission and other appropriate U.S. authorities with access to relevant books, records and trading premises in the U.S.

7. Modification of Registration Requirements

Proposed § 48.5(e) provided that the Commission may, after appropriate notice and an opportunity for hearing, amend, suspend, terminate or otherwise restrict the terms of an Order of Registration. ASX noted that the proposed rules refer to the ability to modify relief, and asked whether the Commission would provide any clarity with respect to applying for modification and the criteria for modification.

The Commission believes it is not necessary to promulgate a specific procedure for applying for modification of FBOT registration requirements or to delineate the circumstances under which modification might be granted. While the Commission would consider a request for modification of specified registration requirements or conditions if such request is supported by adequate justification and appropriate documentation, the Commission does not anticipate that modifications would be granted unless particularly unique factual circumstances are presented. Given that such requests would involve a unique set of facts and circumstances, the Commission believes that a case-by-case approach is appropriate and thus, is adopting § 48.5(e) substantially as proposed, except that the rule now provides for appropriate notice and an opportunity to respond.

8. Other Concerns

a. Prescriptive Nature of the Regulations

Three commenters voiced concern regarding the risk of protectionism by foreign regulators that might arise in the event that the Commission adopts overly prescriptive registration regulations for FBOTs.[56] FOA noted that the standards set in the U.S. for recognition of foreign regulators would impact, for example, the European approach to the recognition of U.S. market infrastructures. CME Group expressed concern that the proposed rules were overly prescriptive and noted that the Commission should be cognizant of the ''realistic possibility'' that enacting the proposed rules might encourage foreign regulators to adopt a reactive regulatory stance toward U.S.-based exchanges. HKFE asserted that the adoption of the proposed rules would be a departure from the CFTC's long-standing policy of mutual recognition and comity and that this could lead to the diminution rather than the expansion of global connectivity.

The Commission has determined to adopt the rule as proposed. The Commission believes that its final regulations properly standardize the process by which FBOTs are permitted to provide direct access to U.S.-located persons, enhance the transparency of that process, ensure consistency and fairness to all applicants for registration, provide greater legal certainty to registered FBOTs, and are more consistent with the manner in which other countries permit U.S. DCMs to provide direct access to their trading systems from within their borders. As previously noted, the Commission believes that the registration requirements in the final rule represent a principles-based approach to limited oversight and are not overly prescriptive. FBOTs will be required to demonstrate, in a manner consistent with the part 48 regulations, that they operate under supervision and regulation that is comparable to that provided by the Commission's regulatory regime for DCMs, but will not be required to comply with the core principles applicable to DCMs under the CEA and the Commission's regulations.

b. Alternative Trading Platforms

HKFE questioned whether the proposal's definition of FBOT would cover alternative trading platforms such as non-U.S.-based dark pools. Further, HKFE questioned whether, if the intention of the proposed rules is to not cover non-U.S. based dark pools or is designed with such threshold requirements as to effectively affect only traditional exchanges in overseas jurisdictions (as not all FBOTs (as defined) are eligible for registration under the proposed rules), an uneven playing field may be created in favor of these dark pools if access to them is available from the U.S.[57]

The Commission has determined to adopt the rule as proposed. The proposal generally limited the markets eligible for FBOT registration to bona fide exchanges that satisfy the eligibility standards set forth in § 48.2(b). The Commission expects that such exchanges might include, for example,

[56] HKFE, FOA, and CME Group.

[57] The definition of ''board of trade'' as set forth in CEA section 1a(2) refers to ''any organized exchange or other trading facility.'' As such, the statutory definition of ''board of trade'' does not preclude the possibility of alternative trading platforms being covered by the FBOT registration scheme.

exchanges recognized in the EU as Regulated Markets, in the UK as Recognized Investment Exchanges (RIE), or in Japan as Licensed Financial Instruments Exchanges. Of course, even if deemed a ''foreign board of trade eligible to be registered'' under § 48.2(b), the FBOT would still have to satisfy all of the requirements and conditions for registration set forth in the regulations. Foreign SEFs and similar entities likely would not be eligible for FBOT registration unless they could demonstrate they are operated and regulated in a manner that is comparable and comprehensive to the manner in which DCMs (not U.S. SEFs), are regulated by the Commission. The FBOT registration rule should not create an uneven playing field in favor of dark pools since such pools are not likely to qualify for registration and, thus, could not provide for direct access under the FBOT registration rules.

c. Impact of FBOT Registration Rules

ICE suggested that the CFTC should consider the impact of its registration scheme against the broader impact of the Dodd-Frank Act and similar financial reform measures taken by other countries. The Commission has determined to adopt the rule as proposed. The proposed FBOT rules were considered against the international implications of the Dodd-Frank Act and similar financial reform measures being taken by other countries. Relevant financial reform measures taken by other countries will be reviewed as part of the examination of the FBOT's application for registration and, to the extent that such relevant reform measures support regulatory objectives that are consistent with those supported by the CFTC, will be favorably considered. The Commission notes that the historical process of examining whether the FBOT is subject to comparable and comprehensive regulation in its home country has been, and will continue to be, the proper approach to maintaining this balance between reliance upon a foreign regulatory regime and ensuring that an FBOT whose trading and order matching system can be accessed by U.S. customers provides adequate protections.

9. On-Going Review of Registered FBOTs

Three commenters indicated that under their interpretation of the NPRM, the Commission would conduct on-going surveillance and examination of FBOTs and their clearing organizations.[58] For example, Better Markets expressed the view that it is important to continuously monitor both the structure of the foreign regulatory regime to which an FBOT is subject and the quality of the administration of that structure and that FBOTs should be required to annually re-affirm and demonstrate the appropriateness of their foreign regulatory regimes, based upon the standards relevant to their initial application for registration.

As previously discussed, CME Group suggested that the Commission's analysis of the FBOT and its regulatory regime should be more narrowly tailored and that the Commission should limit its inquiry to questions regarding the comparability of the regulatory regime in the FBOT's home jurisdiction. If this approach were adopted, CME Group indicated that it would expect that the Commission would continue to vigorously monitor compliance with the core regulatory principles and ensure that the process is not being abused to avoid legitimate CFTC regulation.

Senator Levin similarly commented that, to ensure market integrity, the Commission must effectively police U.S.-based trading in FBOTs and incorporate that activity into its regular surveillance and enforcement efforts. He also noted that the proposed rules would need a robust program of FBOT supervision, as well as surveillance and examination programs that include an integrated review of the FBOT's U.S. trading activity, asserting that the Commission also would need to bring enforcement cases against individuals who engage in manipulative or abusive trading practices that affect U.S. futures and cash markets and market users and attempt to avoid detection by trading in foreign markets in order to deter such activity.

The Commission has determined to adopt the rule as proposed. As previously discussed, FBOTs will be required, prior to being registered, to submit information and documentation demonstrating that they are subject to comprehensive supervision and regulation by the appropriate governmental authorities in their home country that is comparable to the comprehensive supervision and regulation to which DCMs are subject in the U.S. While the regulations require the FBOT and its regulatory authority to provide critical information on an ongoing basis to the Commission, any on-going review of the FBOT and its clearing organization by the Commission generally will be limited to reviewing the required information and documentation that the FBOT must submit periodically to the CFTC and will not include direct surveillance of trading activity. Staff may conduct periodic on-site visits to validate information submitted as part of the registration application and/or required to be submitted as a condition of registration. Staff will, however, conduct additional review with respect to linked contracts, and will monitor these contracts pursuant to the additional conditions levied upon the FBOT for listing such contracts, *e.g.,* large trader and TSS reporting and comparable position limits. The Commission believes that these provisions are adequate to monitor the activities of the FBOT conducted pursuant to an Order of Registration.

10. The Appendix

For purposes of enhanced clarity and standardization, the Commission has elected to revise the proposed Appendix to Part 48 to include the submission requirements identified therein in the proposal in a standardized application form, Form FBOT and Supplement S–1 (for the clearing organization) to Form FBOT. The Commission believes that the use of this form will make it easier to guide applicants in the organization and presentation of information and documentation and to ensure that all required information is included in the application. Use of the form also will improve the staff's ability to organize and review the information in a timely manner.

III. Conclusion and Effective Date

A. Conclusion

For the reasons stated above and in the NPRM and after considering the complete record in this matter, including all comments, the Commission is adopting part 48 substantially as proposed, subject to the revisions to the proposed rules identified above in response to comments submitted or otherwise initiated by the Commission. This new part 48 provides the rules and procedures to be followed by FBOTs that wish to register in order to provide identified members and other participants that are located in the U.S. with direct access to the FBOT's order entry and trade matching system. Part 48 replaces the practice, used since 1996, of issuing staff direct access no-action relief letters to permit FBOTs to provide their members and other participants located in the U.S. with direct access to their trading systems and provides a transitional period for

[58] Better Markets, CME Group, and Senator Levin.

those FBOTs that have received staff no-action relief.

B. Effective Date

This rule shall become 60 days after publication in the **Federal Register**.

IV. Related Matters

A. The Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)[59] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The final Part 48 rules impose new collection of information requirements within the meaning of the PRA. Accordingly, the Commission requested, but the Office of Management and Budget (OMB) has not yet assigned a control number for the new collection of information. However, OMB has assigned the reference number 201011–3038–003 in the interim. The Commission has submitted this final rule along with supporting documentation for OMB's review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The information collection burdens in the final rules are identical to the collection burdens estimated by the Commission in the proposing release, subject to the modifications discussed below.[60]

The Commission protects proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

The Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed in the NPRM. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicited comments in order to: (i) Evaluate whether the proposed collections of information were necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

In response to the Commission's request in the NPRM for comments on any potential paperwork burden associated with the final rules, two commenters provided substantive comments addressing the merits of the Commission's proposed PRA calculations with respect to § 48.6 and the ''limited'' application. DME argued that limited applications by FBOTs operating under no-action relief could easily take 200 to 300 hours to complete rather than the Commission's proposed estimate of 50 hours. Similarly, HKFE contended that the work involved in submitting a limited application under the proposed regime would be substantially more than the 50 hours estimated by the Commission.

The Commission estimated in the NPRM that a total of 20 FBOTs would file a registration application with the Commission pursuant to the limited application procedures in § 48.6. The Commission notes that the final rules governing the limited application differentiate between those FBOTs whose original no-action relief request was submitted electronically and remains on file with Commission staff and those FBOTs whose original no-action relief request was not submitted electronically to the Commission. The Commission estimates that ten FBOTs would be able to take advantage of the streamlined application procedures in final § 48.6. Indeed, the ten FBOTs would be permitted to simply refer to each portion of their original submissions that satisfies a particular registration requirement, identify the specific registration requirement that is fulfilled by that section, and certify that the information or documentation originally provided remains current and true. After considering the comments from DME and HKFE, in conjunction with the streamlined application requirements adopted by the Commission in the final rules, the Commission has determined that it is not amending its estimate of 50 burden hours for the FBOTs whose original no-action relief request was submitted electronically. However, with respect to the ten FBOTs that would need to submit the complete limited application because Commission staff does not have the original no-action relief request on file in an electronic format, the Commission finds some merit in the comments from DME and HKFE and the Commission is revising its estimates accordingly. Specifically, the Commission estimates that the effect of the final rules on these FBOTs will be to increase the information collection burden by approximately 200 hours, and result in approximately 250 hours per FBOT. Consequently, it is anticipated that ten FBOTs will incur an aggregate of 2,500 burden hours compared to the 500 burden hours estimated in the NPRM for such FBOTs.

The Commission is also revising its information burden collection estimate for FBOTs with pending requests for direct access no-action relief. In the NPRM, the Commission estimated that seven FBOTs, including one new FBOT and six FBOTs that currently have pending requests for no-action relief, would submit a full FBOT registration application. The Commission estimated that the seven FBOTs would expend 1,000 burden hours per FBOT to satisfy the registration requirement. However, the Commission has determined to amend its proposal to substantially reduce the information collection requirements for the six FBOTs with pending requests for no-action relief. Specifically, the final rules provide that an FBOT with a pending no-action request as of the effective date of the rule could, as part of its application for registration, identify information or documents provided in its original no-action submission that would satisfy particular registration requirements. In light of the amendments to the Commission's final rules, the Commission is revising its previous estimate by reducing the information collection burden for the six FBOTs from 1,000 burden hours to 250 hours for each FBOT. Thus, it is anticipated that the six FBOTs will incur an aggregate reduction of 4,500 burden hours than what was stated in the NPRM.

Finally, the Commission estimated in the NPRM that four registered FBOTs would permit swaps to be traded by direct access. Proposed § 48.8(a)(8)(i) required a registered FBOT to report to the public, on a real-time basis, data relating to each swap transaction, including price and volume, as soon as technologically practicable after execution of the swap transaction. In the final rules, the Commission is eliminating the real-time reporting

[59] 44 U.S.C. 3501 *et seq.*

[60] *See* the Commission's Paperwork Reduction Act analysis at 75 FR 70984–86 (Nov. 19, 2010).

requirement for FBOTs because that requirement is being placed on swap data repositories. The Commission previously estimated that each of the four FBOTs would incur an annual reporting burden of 2,080 hours to comply with the real-time reporting requirement. Therefore, the Commission has determined that this rule modification will result in an aggregate reduction of 8,320 burden hours.

Accordingly, the Commission has submitted to the OMB an amended calculation of the annual burden hours for FBOTs.

B. Cost Benefit Considerations

Section 15(a) of the CEA requires the Commission to ''consider the costs and benefits'' of its actions in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.[61] The Commission may, in its discretion, give greater weight to any one of the five enumerated areas and may determine that, notwithstanding costs, a particular rule protects the public interest.

1. Background

(a) Description of the Statutory Registration Authority per the Dodd-Frank Act

Section 738 of the Dodd-Frank Act amended CEA section 4(b) to provide that the Commission may adopt rules and regulations requiring FBOTs that wish to provide their members or other participants located in the United States with direct access to register with the Commission.[62] Section 738 also authorizes the Commission to promulgate rules and regulations prescribing procedures and requirements applicable to the registration of such FBOTs. Accordingly, on November 19, 2010, the Commission published a notice of proposed rulemaking that set forth proposed regulations that would establish a registration requirement and related registration procedures and conditions applicable to FBOTs that wish to provide their members or other participants located in the United States with direct access to the FBOT's electronic trading and order matching system (NPRM).[63]

(b) Prior No-Action Regime

Since 1996, FBOT requests to provide members and other participants with direct access to their electronic trading and order matching systems from within the U.S. have been addressed by Commission staff pursuant to the no-action process set forth in Commission regulation 140.99.[64] Specifically, such FBOTs have requested, and, where appropriate, received from the relevant Commission division, a no-action letter. As part of the no-action letter, division staff would represent that the division will not recommend that the Commission institute enforcement action against the FBOT for failure to register as a DCM or DTEF if the FBOT provides direct access to members and participants located in the U.S, provided the FBOT satisfies the conditions set forth therein. A no-action request from an FBOT was required to include representations and supporting documentation from the FBOT regarding, among other things, its organization, presence in the U.S., participants, the products it wishes to list for direct access, its trading system and the regulatory regime and information-sharing arrangements to which the FBOT is subject. As noted above, since 1996, Commission staff has issued 24 direct access no-action relief letters to FBOTs, 20 of which remain active.[65] A detailed discussion of the history and evolution of the FBOT no-action process and the scope of the relief provided can be found in the NPRM.[66]

(c) Replacing No-Action Regime With Registration Requirement

(i) Overview. As described in detail in the preamble, the registration regime established in new part 48 will replace the direct access no-action relief process. That registration regime is being established pursuant to the Commission's authority found in section 4(b) of the CEA, as amended by section 738 of the Dodd-Frank Act, as described above. Based on the nature of the directives in CEA section 4(b), this final rulemaking contains certain statutorily mandated components as well as other discretionary components.

(ii) Mandatory components of statute. The adoption of a registration regime applicable to FBOTs that desire to provide their members or other participants located in the U.S. with direct access to their trading systems is discretionary. However, if the Commission determines to adopt such a registration regime, certain non-discretionary guidelines are mandated in the statute. Specifically, CEA section 4(b)(1)(A) provides that:

> In adopting such rules and regulations, the Commission shall consider—
>
> (i) Whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country; and
>
> (ii) Any previous commission findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade's home country.

Because the Commission is promulgating an FBOT registration scheme, the Commission is required to incorporate these two guidelines in issuing the final rules. In accordance with these two guidelines, part 48 includes certain requirements, procedures, and conditions for FBOT registration. While there are some costs inherent in a FBOT registration scheme that follows the scope of review mandated by Congress, the Commission considers the costs and benefits associated with implementing the discretionary components of this FBOT registration scheme below.

Several provisions applicable to a linked contract are mandatory regardless of whether the Commission adopts FBOT registration rules.[67] Specifically, CEA section 4(b)(1)(B), as amended by the Dodd-Frank Act, mandates that the Commission may not permit an FBOT to make a linked contract available via direct access absent several statutorily specified conditions. These conditions, set forth

[61] 7 U.S.C. 19(a).

[62] Direct access is defined in section 4(b) of the CEA, as amended by section 738 of the Dodd-Frank Act, to refer to an explicit grant of authority by an FBOT to an identified member or other participant located in the U.S. to enter trades directly into the FBOT's trade matching system.

[63] *See Registration of Foreign Boards of Trade,* 75 FR 70974 (Nov. 19, 2010).

[64] *See, e.g.,* CFTC Letter No. 96–28 (Feb. 29, 1996). Commission regulation 140.99 defines the term ''no-action letter'' as a written statement issued by the staff of a Division of the Commission or of the Office of the General Counsel that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the beneficiary.

[65] One no-action relief letter was superseded and three were revoked when the FBOTs ceased operations as regulated or recognized markets. Currently, 14 of the FBOTs with active no-action relief report volume originating from the U.S. via direct access.

[66] 75 FR 70974–76.

[67] Based upon the statutory provision regarding linked contracts in CEA section 4(b)(1)(B), § 48.2(d) defines a linked contract as a futures, option or swap contract that is made available for trading by direct access by a registered FBOT that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity as defined in section 1a(40) of the Act.

in § 48.8(c)(1), address (1) making public daily trading information regarding the linked contract that is comparable to the daily trading information published for the contract to which it is linked; (2) adopting position limits for the linked contract that are comparable to the position limits adopted by the registered entity for the contract to which it is linked; (3) having the authority to require or direct any market participant to limit, reduce, or liquidate any position; (4) agreeing to promptly notify the Commission of certain changes with respect to the linked contract; (5) providing information to the Commission regarding large trader positions in the linked contract that is comparable to the large trader position information collected by the Commission for the contract to which it is linked; and (6) providing the Commission such information as is necessary to publish reports on aggregate trader positions for the linked contract that are comparable to such reports on aggregate trader positions for the contract to which it is linked.

Congress mandated these linked-contract conditions on FBOTs. To the extent that these new rules reflect the statutory provisions of the Dodd-Frank Act, such rules will not create costs and benefits in addition to the costs and benefits that already will result from the action of Congress in passing the Dodd-Frank Act. However, such rules may generate costs and benefits that are attributable to the determinations made by the Commission regarding the manner in which statutory provisions in the Dodd-Frank Act should be implemented. The costs and benefits of these Commission determinations are considered in light of the five factors set forth in CEA section 15(a).

(d) Purpose of the Final Rules

As described in the preamble, the purpose of these final rules is to formalize and standardize the process by which an FBOT may provide traders located in the U.S. with direct access to its trading system. By implementing uniform application procedures and registration requirements and conditions, the process will become more standardized and more transparent to both registration applicants and the general public and will promote fair and consistent treatment of all applicants. Further, generally applicable regulations will provide greater legal certainty for FBOTs providing direct access than the no-action relief process because no-action letters are issued by the staff and are not binding on the Commission.

In determining to adopt formal registration rules for FBOTs, the Commission has considered that the no-action process is generally better suited for discrete, unique factual circumstances and for situations where neither the CEA nor the Commission's regulations directly address the issue presented. The Commission has determined that, where the same type of relief is being granted on a regular and recurring basis, as it has been with respect to permitting FBOTs to provide direct access to their trading systems to specified members and other participants that are located in the U.S., it is no longer appropriate to handle requests for the relief through the no-action process. Rather, such matters should be addressed in generally applicable regulations. The Commission also notes that a statutory-based regulatory FBOT registration regime will be more consistent with the statutory-based framework under which other countries, including the UK, Australia, Singapore, Japan and Germany, among others, permit DCMs to provide direct access internationally.

(e) Public Comment

As described in detail in the preamble, the Commission, in preparing these final rules, sought and incorporated comment from the public. In the NPRM, the Commission specifically requested comment on the cost benefit section and invited commenters to provide data quantifying the costs and benefits of the proposed regulations. The Commission received 14 comments discussing the costs and benefits of the proposed rules, but none that provided quantitative data. These comments included 10 letters from entities representing thirteen FBOTs operating under existing no-action relief,[68] one letter from another exchange,[69] and one letter each from FOA, CME Group, and ESMA. Those comments are specifically addressed in the context of the extended cost benefit consideration discussion below.

2. Summary of the Final Rules

As described in detail in section III of the preamble, new part 48 provides the procedures, requirements, and conditions to be met by FBOTs that seek to provide their members and other participants in the U.S. with direct access to the FBOT's order entry and trade matching system. The final rules set forth, among other things, procedures an FBOT must follow in applying for registration, requirements that an FBOT must meet in order to obtain registration, conditions that an FBOT must satisfy on a continuing basis upon obtaining registration, and provisions for the termination of registration.

Specifically, § 48.1 sets forth the scope of the rules and § 48.2 provides definitions applicable to the registration provisions. Section 48.3 makes it clear that registration is required if an FBOT wishes to provide for direct access. Section 48.4 establishes registration eligibility and identifies the entities to which an FBOT can permit direct access once it is registered. Pursuant to § 48.5, FBOTs wishing to provide direct access to their trading systems to members and other participants located in the U.S. will be required to file an application for registration with the Commission that contains all of the information and documentation necessary to successfully demonstrate that the FBOT satisfies the registration requirements contained in § 48.7. In addition, § 48.5 describes the procedures for applying for registration, notices the applicant that the Commission will be considering the two statutorily-mandated guidelines, among other things, in its review of the application, and describes the Commission response following approval or disapproval of the application. Section 48.6 provides a limited application procedure for FBOTs currently operating under existing no-action relief and FBOTs that have submitted a complete application for no-action relief that is pending as of the effective date of this regulation. Section 48.7, previously mentioned, includes the requirements that must be met before an FBOT can be registered. Once registered, all FBOTs will have to maintain continuing compliance with the conditions listed in § 48.8 of the final rules, including the statutorily-mandated conditions on linked contracts. Section 48.9 provides the rules for the revocation of registration. Finally, § 48.10 establishes the process for an FBOT to make additional contracts available for direct access following an initial registration.

3. Factors Affecting the Scope of the Final Rules

The costs that the rules impose on FBOTs seeking registration will vary depending on various factors including the size of the FBOT and whether the FBOT's clearing organization is a DCO. Larger FBOTs are more likely to have the means to hire U.S. counsel or sufficient staff expertise to submit a complete registration application in an

[68] DME, LME, MX, ICE (owner of ICE Futures Europe and ICE Futures Canada), HKFE, BM&F, OMX, NYX (operator of Liffe, Euronext Paris SA, and Euronext Amsterdam N.V.), Eurex, and OSE.

[69] NGX.

efficient manner than smaller FBOTs. It may be less costly to demonstrate that a clearing organization is a DCO than that it complies with the RCCPs. Another factor that could affect costs is demonstrating the comparability of the supervision by the FBOT's home regulator, since regulatory structures in different countries vary. Moreover, the cost of filing a limited application for FBOTs operating under the no-action regime will vary, depending on whether or not the FBOT's original request was filed electronically and remains on file with the Commission.

The Commission's consideration of costs and benefits contains discussions of three general aspects of the rulemaking: the requirements for filing a new registration application; the limited application requirement for FBOTs operating under the current no-action regime; and compliance costs. The Commission is only considering the marginal costs and benefits of the proposed regulations that are in addition to, or in lieu of, the costs and benefits associated with the current no-action regime.

4. Filing a New Application for Registration

Costs: The Commission estimates that it will cost approximately $46,310 for an FBOT to submit a new registration application. This is based on an average wage for a compliance staffer and a compliance attorney of $46.31 per hour [70] and a total burden of 1,000 hours. The Commission recognizes that some FBOTs hire outside counsel based in the U.S. with expertise in the FBOT registration process. While the Commission is uncertain about the billing rates that FBOTs pay for U.S. counsel, the Commission believes that such counsel may bill at a rate of several hundred dollars per hour. U.S. counsel may be able to leverage its expertise to substantially reduce the number of hours needed to fill out an application, but an FBOT that utilizes outside counsel may incur higher costs than an FBOT that does not use outside counsel. The Commission notes that any determination to use outside counsel is at the discretion of the FBOT.

The Commission notes that the proposed registration process is an outgrowth of the existing policy of allowing FBOTs to provide U.S.-based traders with direct access to their trading systems through staff no-action letters and that most of the costs associated with this rule also are associated with applying for no-action relief. The costs that will be incurred by an FBOT as a result of the registration requirements and the conditions contained in the proposed regulations, with certain exceptions (*e.g.,* additional submission requirements related to the FBOTs regulatory authority and clearing and settlement policies and procedures), substantially replicate the costs that would otherwise be incurred by an FBOT applying for no-action relief under the existing process. For example, FBOTs requesting no-action relief under existing procedures are required to provide the Commission staff with similar information and documentation to that which would be required for registration under the proposed regulations (*e.g.,* information regarding the FBOT's trading system, terms and conditions of contracts to be made available by direct access in the U.S., and the regulatory regime governing the FBOT in its home country). The Commission believes that these costs, for the most part, do not represent a substantial increased burden, but rather reflect the continuation of an existing process—which is now proposed to be formalized. The Commission estimates that the increase in costs for new FBOTs to register rather than obtain a no-action letter is within a range between 100 hours or $4,631 per FBOT and 200 hours or $9,262 per FBOT.[71]

There may be some costs for certain FBOTs if they need to upgrade their systems or procedures to meet the registration requirements. For example, an FBOT electing to offer linked contracts that did not previously impose position limits may need to establish a procedure for enforcing position limits. The Commission is unable to quantify these costs since it does not know what particular changes future FBOTs may need to make in their systems or procedures to comply with the registration requirements. However, the Commission anticipates that FBOTs applying for registration in the future, like FBOTs that applied for no-action relief in the past, generally will be compliant with the requirements before submitting their applications, so the cost of upgrading their systems and procedures should be minimal for most FBOTs. As discussed in the preamble, the FBOT requirements generally reflect existing industry practice and FBOTs are required to be subject to a comparable regulatory regime. Therefore, the Commission expects that FBOTs that meet the requirements of their home regulator and follow industry practice will meet the registration requirements and that most FBOTs will not need to make any upgrades to their systems or procedures.

As noted above, the Commission has determined to amend its proposal to substantially reduce the information collection requirements for the six FBOTs with pending requests for no-action relief. Specifically, the final rules provide that an FBOT with a pending no-action request as of the effective date of the rule could, as part of its application for registration, identify information or documentation provided in its original no-action submission that would satisfy particular registration requirements. As noted in the PRA section, the Commission estimates that each of these FBOTs will have to devote 250 hours to converting the no-action request to a registration application at a cost of about $11,578 per FBOT for a cumulative cost of $69,468.

Benefits: The Commission notes that the no-action process has been effective in permitting FBOTs to provide for direct access while protecting U.S. persons trading by direct access by seeking to ensure that the FBOT's rules and procedures are adequate and that the regulatory regime of its home regulatory authority supports regulatory objectives that are substantially similar to those supported by the CFTC. The Commission believes that formalizing the registration process will provide the additional benefits of increased standardization for filing requirements and greater levels of legal certainty for operating FBOTs. In addition, formalized registration rules, including the application form, will create an efficient application process with enhanced visibility to ensure fair and consistent treatment of applicants. In particular, the registration procedure and application form will also assist applicants in determining what information needs to be provided to obtain registration, which may reduce costs by making it more likely that the application will be complete upon initial submission. These benefits, which are not readily quantifiable, are

[70] As noted on page six of the Paperwork Reduction Act Supporting Statement (PRA Supporting Statement) for the final FBOT registration rules, this number is derived from SIFMA's ''Report on Management & Professional Earnings in the Securities Industry—2010'' and represents the estimated average wage of a compliance attorney and a compliance staffer in the U.S. While wages in the home countries of FBOTs may differ, the Commission does not have access to data on the compensation of compliance staffers in other countries and is using the information in the SIFMA report as a best available estimate. The PRA Supporting Statement can be accessed at *http://www.reginfo.gov/public/do/PRAView Document?ref_nbr=201011-3038-003.*

[71] This increase in costs reflects the registration requirements that were not required in the no-action process, including additional submission requirements related to the FBOTs regulatory authority and clearing and settlement policies and procedures.

not, for the most part, currently available under the no-action process.

Public Comments: The Commission received comments about the registration system in general as well as about specific aspects, including the regulatory comparability and clearing requirements.

Registration System: Five commenters[72] stated that the proposed registration system was overly burdensome, overly prescriptive, or that it unnecessarily subjected FBOTs to duplicative regulation without corresponding benefit. OMX stated: ''Our main concern related to the proposed rules is that they will involve a quite extensive process in order to obtain and maintain registration. [* * *] [E]xtensive and detailed requirements * * * may be deemed to impose an unreasonable burden on the applicants.'' ESMA said, ''[T]he new registration procedure and the mandatory application of very comprehensive, ongoing requirements to all FBOTs would be burdensome and costly without any apparent improvements for the safeguard of public interests such as the maintenance of fair and orderly markets, investor protection and the resilience of the market.''

As discussed above, the Commission notes that the proposed registration process is an outgrowth of the existing policy of issuing no-action letters and that it entails costs that are similar to that of the existing no-action process.

In connection with commenters criticizing the ''overly prescriptive'' nature of the proposed rules, the Commission has identified, based upon its experience with its regulation of DCMs and the Commission staff experience in reviewing and evaluating FBOTs for purposes of no-action relief, several areas which it considers critical in determining if the FBOT has established its ability to provide on an ongoing basis, adequate protection to U.S. participants who trade and clear on the FBOT. These areas include, among others, compliance of the trading system with the IOSCO Principles, adequate trade practice and market surveillance programs, and a clearing and settlement organization that meets universally recognized standards. Moreover, amended CEA section 4(b) requires the Commission to consider whether the relevant FBOT is subject to comparable, comprehensive supervision and regulation by appropriate governmental authorities in the FBOT's home country. The Commission believes that, in these instances, rules are necessary in order to ensure that the Commission receives sufficient information and documentation to make these assessments and to ensure that registration applicants are subject to standardized and transparent obligations. The Commission also notes that the proposed regulations were drafted to provide flexibility where possible and warranted. For example, the final rules require the FBOT's clearing organization to successfully demonstrate that it satisfies the RCCPs, but do not mandate the manner in which the clearing organization must fulfill those principles.

Nonetheless, the Commission has identified specific areas in which it is able to set forth the FBOT registration requirements in a less-prescriptive manner. For example, the Commission is modifying the proposed regulations to clarify that an FBOT whose clearing organization is registered with the Commission as a DCO would not be required to separately establish that it satisfies the requirements contained in proposed § 48.7 (*e.g.*, a clearing organization that is registered as a DCO would not be required to demonstrate that its participants are fit and proper and meet appropriate financial and professional standards).

Finally, in an effort to avoid unnecessary duplication in the text of the rule, the Commission has removed the appendix from the rules and is replacing it with a standardized application form.

Regulatory Comparability: Two comment letters stated that the comparability analysis in conjunction with the broad set of requirements and conditions described in the proposed rules was overly burdensome. LME suggested that it would be better if the Commission made a single comparability determination for FBOTs residing in the same jurisdiction. CME suggested that the proposed comparability evaluation by the Commission was too burdensome on both FBOTs and the Commission. As an alternative, CME suggested that the Commission should limit its assessment to whether an FBOT is subject to a comparable regulatory regime by its home country regulator. This commenter said, ''[W]e have a significant concern that the proposed rules are too prescriptive and would impose significant burdens without corresponding benefit.''

The Commission reiterates that the statute requires that if the Commission implements a formal registration system, it must review whether any applicant ''is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country.'' The Commission does have discretion on how to implement this requirement and is using that discretion to revise the final rule to provide an option for evaluation of the regulatory authority when multiple FBOTs that are subject to the same regulatory regime are applying for registration at the same time. In other words, the rule, as adopted, would permit multiple FBOTs that are subject to the same regulatory regime that are applying for registration at the same time to collectively provide information regarding their regulatory regime and would permit a foreign regulator (rather than the FBOT) to provide the required information regarding the regulatory regime to which those multiple FBOTs may be subject. This should significantly reduce the cost burden to FBOTs when there are multiple FBOTs under the same regulatory regime. However, the Commission notes that any evaluation will not begin and end with a review of the FBOT's regulatory authority. The nature of the FBOT's trading and clearing systems, rule enforcement, surveillance practices, and information-sharing ability, among other things, are critical to any pre-registration review.

Clearing: As discussed in section II.B.2.d. above, Eurex stated that extending the Commission's review to FBOT clearing would impose increased burdens on the Commission's limited resources. This commenter suggested that the Commission should rather require than an FBOT simply demonstrate that, if its clearing organization is not a DCO, the clearing organization complies with the RCCPs.

The Commission notes that consideration of a foreign board of trade's clearing and settlement function, to a certain extent, is already incorporated into the existing no-action process and, accordingly, is not itself a totally new requirement. In this respect, the final rules seek to provide transparency and standardization with respect to the necessary clearing organization attributes by requiring that the clearing firm either satisfy an internationally recognized standard for central counterparties or be registered as a DCO. This will benefit U.S. persons trading on the FBOT by providing an added level of security in knowing that the FBOT's clearing organization has represented that it meets internationally recognized standards or is a DCO. The Commission, however, has streamlined the regulation in the final rule to eliminate the requirements contained in § 48.7 if the clearing firm is registered

[72] OMX, NYX, FOA, ESMA, and CME.

with the Commission as a DCO. The cost of demonstrating that a clearing organization is a DCO is *de minimus.* Because the manner of satisfying the RCCPs or their successor standards is at the discretion of the FBOT's clearing organization, the Commission is unable to quantify the costs of demonstrating that the clearing organization observes the RCCPs or their successor standards.

ICE stated that ''the CFTC should not place a greater burden on FBOTs than it does on U.S. regulated markets,'' in particular by imposing mandatory clearing requirements on swaps executed on FBOTs. ICE noted that SEFs are not subject to mandatory clearing requirements. However, the Commission notes that under the Dodd-Frank Act, swaps traded on DCMs will be subject to mandatory clearing requirements. The Commission believes that the treatment of swaps registered FBOTs will make available for trading to members and other participants located in the U.S. through direct access should parallel the treatment afforded to swaps transactions that may be traded on DCMs and, thus, they must be cleared. It is not clear whether a foreign SEF-equivalent would meet the FBOT eligibility requirements outlined in Rule 48.2(b) or be eligible for FBOT registration, but it is unlikely that such an entity would be eligible unless the entity could demonstrate that it is operated and regulated in a manner that is comparable and comprehensive to the manner in which DCMs (not U.S. SEFs), are regulated by the Commission. An FBOT could still offer non-cleared swaps to its market participants, but would be unable to offer such contracts via direct access in the U.S. The Commission is unable to quantify the costs of mandatory clearing of swaps on FBOT market participants, but such costs would approximate the costs of clearing futures since any listed swap contracts would have standardized terms and would resemble futures contracts. The Commission also cannot predict, at this time, whether FBOTs will elect to list swap contracts for direct access and, if so, how many FBOTs will make available how many swaps contracts.

5. Filing a Limited Application

Costs: As noted, the Commission is requiring the 20 FBOTs currently operating under no-action relief to register, but is permitting them to file a limited application for registration. This is an additional cost being imposed on these FBOTs as a consequence of this rule. The ten FBOTs that filed their no-action requests electronically will be able to simply refer to each portion of their original submissions that satisfies each particular registration requirement and certify that the information or documentation originally provided remains current and true. The Commission estimates that the cost of filing a limited application for each of these FBOTs will be approximately $2,316 (50 hours at $46.31 per hour) for a cumulative cost of $23,160. The remaining 10 FBOTs that did not file electronically will have to resubmit much of the material and therefore will each incur higher costs of approximately $11,578 (250 hours at $46.31 per hour) for a cumulative cost of $115,780. The cumulative cost across 20 FBOTs will be $138,940.

Benefits: FBOTs using the limited application process will receive the benefits noted above of receiving a formal Commission registration order rather than a staff no-action letter (which provided for less legal certainty). These FBOTs will be operating on firmer legal ground and the Commission, market participants, and the public will benefit from the knowledge that all FBOTs offering direct access in the U.S. meet the registration requirements. There are also benefits that accrue to registering all FBOTs under the same transparent requirements, thus ensuring a ''level playing field'' going forward and ensuring that the Commission has the same set of information on file regarding each registered FBOT.

Public Comments: As discussed above, several commenters [73] addressed the proposed ''limited application'' scheme, suggesting that the limited application was overly burdensome, of limited value, or even unnecessary—preferring a grandfather provision for FBOTs operating under existing no-action relief. They commented in the context of the cost benefit section that the limited application process was too burdensome in its entirety for an FBOT that had previously obtained no-action relief. And at least two of the commenters, DME and CME, noted that, in the context of evaluating the burdens imposed by the proposed registration process, providing grandfather registration for FBOTs with existing no-action relief would be the better course. Finally, as addressed above, multiple commenters requested that the time-frame within which a limited application must be filed should be extended to at least 180 days following the effective date of final registration rules in order to ease the administrative burden of preparing and filing the proper documentation. Specifically, NYX stated:

> Under the [p]roposal, an FBOT with an existing no-action relief letter is required to submit a completed limited application for registration within 120 days of the effective date of the Proposal. The Proposal, however, would create a burdensome process requiring re-submission of voluminous materials, information and data that was previously provided to the Commission—a time-consuming and expensive exercise for FBOTs that previously have invested considerable resources to receive and maintain no-action relief letters.

In the context of the burdens of preparing documentation for the limited application, MX argues that, ''Placing greater reliance on [the Commission's] past findings [of comparability] under the no-action process will not only lessen the burden on FBOTs, but it will conserve constrained Commission resources with no diminution of protections to the public or any increase in systemic risk.'' NGX stated that an FBOT with a pending no-action request should be considered to be eligible to file a limited application rather than a complete application.

As discussed above, the Commission is extending the time for filing a limited application to 180 days from 120 after the effective date of this final rule. This change will address comments that the 120 day timeline placed an excessive burden on applicants. The Commission also is revising the rule to permit an FBOT with a pending no-action request to file a limited application rather than a complete application.

The limited application procedure will, as noted, benefit market participants, and the public by ensuring that all FBOTs offering direct access in the U.S. meet the current registration requirements. This benefit would be foregone if the Commission were to grandfather FBOTs that are operating under existing no-action relief without any further review. FBOT requests for no-action relief were assessed based upon the information and documentation presented at the particular time of the request (as early as 1999) and the assessments were based upon a comparison of the regulatory regimes in the U.S. and the applicable foreign jurisdiction that existed at the time. In addition, early no-action letters included only a limited analysis of the FBOT's clearing system because the current regulatory structure applicable to U.S. clearing organizations did not exist at that time of issuance.

The Commission also does not believe that it would be either feasible or appropriate for the Commission staff to ascertain for each FBOT operating under

[73] BM&F, OMX, NYX, DME, CME, and MX.

existing no-action relief the precise information in its individual no-action request that would need to be updated or revised to satisfy registration requirements. The FBOTs are in a better position to recognize their own particular circumstances and to identify the additional information and documentation that may require updating in light of those changes. The FBOT should be afforded the opportunity to provide materials demonstrating that the foreign regime is comparable and comprehensive to the regulatory regime in the U.S.

6. Complying With Conditions Applicable to Registration

Once registered, an FBOT will be required to file a number of reports with the Commission. Most of these reports are required under the current no-action regime and therefore requiring these reports of registrants will not impose additional costs on FBOTs that are currently providing direct access pursuant to no-action letters. Specific reporting requirements that are currently required under the no-action regime include § 48.8(b)(1)(i)(A) and (B) regarding trading volume information, § 48.8(b)(1)(ii)(A)–(F) regarding material changes to registration information (except where requirements specifically address the FBOT's clearing organization), and § 48.10 regarding the listing of additional futures and options contracts. New requirements include § 48.8(b)(1)(iii)(B)–(G) regarding annual submission of information and § 48.9 regarding demonstration of compliance with conditions for registration, as well as the requirement regarding material changes to the clearing organization. In the PRA section of the NPRM, it was estimated that the total annual burden of all reporting requirements for all registered FBOTs combined was 972 hours.[74] The Commission estimates that approximately 150 of these 972 hours represent the new reporting requirements that were not required under the no-action regime and the cumulative annual cost of complying with these new requirements will be $6,947 (150 hours at $46.31 per hour).

There are also a number of provisions that apply to contracts that are linked to U.S. futures contracts. These provisions, set forth in § 48.8(c)(1) and described above, and their associated costs generally are required under the CEA as amended by Dodd-Frank and the Commission lacks discretion regarding their implementation. Other provisions, set forth in § 48.8(c)(2), are also currently imposed on FBOTs with linked contracts operating under no-action relief.[75] Therefore, the costs associated with the linked contract provisions required by § 48.8(c)(2) are not increased relative to those incurred by FBOTs currently.

Benefits: The new recordkeeping requirements in Regulation 48.8(b)(1)(iii)(B)–(G) regarding annual submission of information and Regulation 48.9 regarding demonstration of compliance with conditions for registration will provide the Commission, market participants and the public with the benefit of knowing that registered FBOTs are continuing to meet the requirements for registration, including providing fair and equitable trading platforms, and that the contracts available for direct access are not readily susceptible to manipulation.

Public comments: The Commission received cost-benefit related comments regarding the linked contract provisions.

Linked contract provisions: In connection with the burdens imposed by the proposed linked contract provisions, OSE stated that extra conditions were only necessary for FBOTs offering linked contracts in which there is more than a de minimis amount of trading. OSE specifically highlighted the imposition of speculative position limits on linked contracts as an example of a condition which would create an excessive burden. OSE also objected to the requirement that trade execution and audit trail data for linked contracts be submitted to the Commission on a daily basis. They suggested that the benefit of such a condition, in comparison to the costs, may be more useful if FBOTs were only required to submit trade execution and audit trail data for linked contracts on an ''as necessary'' basis—rather than on a daily basis.

The Commission notes that some of the linked contract conditions/requirements in the final rule are mandated by the Dodd-Frank Act, including the position limit requirements. Other provisions, such as the requirement that trade execution and audit trail data for linked contracts be submitted to the Commission on a daily basis, have been imposed by Commission staff on FBOTs that list linked contracts and have been found to be useful in accomplishing the Commission's market surveillance responsibilities. Commission staff conducts surveillance and reviews the trading data on a daily basis, and the trade data submitted daily from the FBOT's linked contract are a critical component of this surveillance. The Commission is of the opinion that the linked contract provisions serve to enhance the Commission's market surveillance capabilities because such linkages create a single market for the subject contracts and, in the absence of certain preventive measures at the FBOT, could compromise the Commission's ability to carry out its market surveillance responsibilities. Because of the linkage, the trading of the linked contracts on an FBOT potentially affects the pricing of contracts traded on U.S.-registered entities.

Section 15(a) Factors

1. Protection of Market Participants and the Public

The final rules will further the protection of market participants and the public in numerous ways, including ensuring that FBOTs' automated trading systems comply with the IOSCO principles, match trades fairly and timely with a proper audit trail, and meet other requirements as described in Rule 48.7(b) and that the clearing organizations are DCOs or observe the RCCPs or their successor standards. The rules requiring that contracts offered by FBOTs are not readily susceptible to manipulation and the rules regarding linked contracts, including the requirement that linked contracts have appropriate position limits, will also further the protection of market participants and the public. Further protection is provided by the requirement that FBOTs offering direct access to U.S. participants and their clearing organizations have proper rule enforcement procedures and are subject to comprehensive supervision and regulation by the appropriate government authorities in their home country that is comparable to the Commission's comprehensive supervision and regulation and that information sharing agreements are in place. Finally, the examination of FBOT and clearing organization membership standards will also further the protection of market participants and the public.

2. Efficiency, Competitiveness, and Financial Integrity of the Markets

The requirements that the FBOTs' automated trading systems contain a trade matching algorithm that matches trades in a fair and timely manner and that trading data be made available to users and the public will further the efficiency and competitiveness of the markets. The financial integrity of the markets will be furthered by the rules

[74] *See* 75 FR 70984–85 (Nov. 19, 2010) and PRA Supporting Statement at 12 (Nov. 23, 2010).

[75] *See* CFTC Letter No. 09–37 (August 20, 2009).

requiring that clearing organizations be DCOs and meet DCO requirements or specifically represent that they observe each of the RCCPs (or their successor standards) and by the examination of FBOT and clearing organization membership standards. The rules requiring that contracts offered by FBOTs not be readily susceptible to manipulation will also further these considerations. The linked contract rules, including the position limit requirement, will also further the efficiency, competitiveness, and financial integrity of markets.

3. Price Discovery

The rules regarding the automated trading systems, including the trade matching rule, will further the price discovery process in FBOT contracts. The linked contract provisions will protect the price discovery process for linked contracts and the U.S. contracts that they are linked to by ensuring that the linked contracts have position limits and accountability provisions comparable to the corresponding U.S.-based contracts and that the price and volume data for linked contracts are disseminated in a comparable manner to their U.S. counterparts. The rules requiring that contracts offered by FBOTs for direct access not be readily susceptible to manipulation will also help protect the price discovery process.

4. Sound Risk Management Procedures

The requirement that FBOTs' clearing organizations be DCOs or demonstrate observance of the RCCPs or their successor standards will further sound risk management procedures by ensuring that clearing organizations represent that they use risk management procedures that are consistent either with Commission regulations or internationally recognized standards.

5. Other Public Interest Considerations

The Commission believes that adopting formal registration provisions will further other public interest considerations by replacing the no-action procedure with a standardized and transparent application process and providing enhanced legal certainty to registered FBOTs and their clearing organizations.

C. The Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider the impact of its rules on ''small entities.'' [76] A regulatory flexibility analysis or certification typically is required for ''any rule for which the agency publishes a general notice of proposed rulemaking pursuant to'' the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).[77] The Commission noted in the proposing release that although it has established certain definitions of ''small entity'' to be used in evaluating the impact of its rules under the RFA, it had not previously addressed the question of whether FBOTs are small entities for purposes of the RFA.[78] The Commission previously determined that DCMs are not small entities for purposes of the RFA.[79] In the proposing release, the Commission determined that because FBOTs and DCMs are functionally equivalent entities, FBOTs like DCMs are not ''small entities'' for purposes of the RFA.

In response to the Proposed Rules, the Not-For-Profit Electric End User Coalition (Coalition) submitted a comment generally criticizing the Commission's ''rule-makings [as] an accumulation of interrelated regulatory burdens and costs on non-financial small entities like the NFP Electric End Users, who seek to transact in Energy Commodity Swaps and ''referenced contracts'' only to hedge the commercial risks of their not-for-profit public service activities.'' [80] In addition, the Coalition requested ''that the Commission streamline the use of the bona fide hedging exemption for non-financial entities, especially for those that engage in CFTC-regulated transactions as 'end user only/bona fide hedger only' market participants.''

After further consideration in light of this comment, the Commission has determined that this final rulemaking, which is applicable only to FBOTs, will not have a substantial economic effect on a substantial number of small businesses. Accordingly, for the reasons stated in the proposal and the fact that the Coalition does not represent bodies that will be registering with the Commission as FBOTs, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these rules will not have a significant economic impact on a substantial number of small entities. The Chairman made the same certification in the NPRM, and the Commission did not receive any comments on the RFA in relation to the proposed rulemaking.

List of Subjects in 17 CFR Part 48

Foreign Boards of Trade, Commodity futures, Options, Swaps, Direct Access, Linked Contract, Registration, Existing No-action Relief, Conditions of Registration.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 3, 4 and 8a of the Act, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by adding part 48 to read as follows:

PART 48—REGISTRATION OF FOREIGN BOARDS OF TRADE

Sec.
48.1 Scope.
48.2 Definitions.
48.3 Registration required.
48.4 Registration eligibility and scope.
48.5 Registration procedures.
48.6 Foreign boards of trade providing direct access pursuant to existing no-action relief.
48.7 Requirements for registration.
48.8 Conditions of registration.
48.9 Revocation of registration.
48.10 Additional contracts.
Appendix—Part 48—Form FBOT

Authority: 7 U.S.C. 5, 6 and 12a, unless otherwise noted.

§ 48.1 Scope.

The provisions of this part apply to any foreign board of trade that is registered, required to be registered, or applying to become registered with the Commission in order to provide its identified members or other participants located in the United States with direct access to its electronic trading and order matching system.

§ 48.2 Definitions.

For purposes of this part:

(a) *Foreign board of trade.* Foreign board of trade means any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated.

(b) *Foreign board of trade eligible to be registered.* A foreign board of trade eligible to be registered means a foreign board of trade that satisfies the requirements for registration specified in § 48.7 and:

(1) Possesses the attributes of an established, organized exchange,

(2) Adheres to appropriate rules prohibiting abusive trading practices,

(3) Enforces appropriate rules to maintain market and financial integrity,

(4) Has been authorized by a regulatory process that examines customer and market protections, and

(5) Is subject to continued oversight by a regulator that has power to intervene in the market and the authority to share information with the Commission.

[76] 5 U.S.C. 601 *et seq.*

[77] 5 U.S.C. 601(2), 603, 604 and 605.

[78] *See* 75 FR 70987 (Nov. 19, 2010).

[79] *See* 47 FR 18618, 18619, Apr. 30, 1982.

[80] *See* Coalition at 29.

(c) *Direct access.* Direct access means an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.

(d) *Linked contract.* Linked contract means a futures, option or swap contract that is made available for trading by direct access by a registered foreign board of trade that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity as defined in section 1a(40) of the Act.

(e) *Communications.* Communications means any written or electronic documentation or correspondence issued by or on behalf of the Commission, the United States Department of Justice, or the National Futures Association.

(f) *Material change.* Material change means a material change in the information provided to the Commission in support of an application for registration under this part. Subsequent to registration, material change also includes a material change in the operations of the foreign board of trade or its clearing organization and, without limitation, a change in any of the following: The membership or participant criteria of the foreign board of trade or its clearing organization; the location of the management, personnel or operations of the foreign board of trade or its clearing organization; the structure, nature, or operation of the trading or clearing systems; the regulatory or self-regulatory regime applicable to the foreign board of trade, its clearing organization, or their respective members and other participants; the authorization, licensure, registration or recognition of the foreign board of trade or clearing organization; and the ability of the clearing organization to observe the Recommendations for Central Counterparties.

(g) *Clearing organization.* Clearing organization means the foreign board of trade, affiliate of the foreign board of trade or any third party clearing house, clearing association, clearing corporation or similar entity, facility or organization that, with respect to any agreement, contract or transaction executed on or through the foreign board of trade, would be:

(1) Defined as a derivatives clearing organization under section 1a(15) of the Act; or

(2) Defined as a central counterparty by the Recommendations for Central Counterparties.

(h) *Existing no-action relief.* Existing no-action relief means a no-action letter issued by a division of the Commission to the foreign board of trade in which the division informs the foreign board of trade that it will not recommend that the Commission institute enforcement action against the foreign board of trade if the foreign board of trade does not seek designation as either a designated contract market pursuant to section 5 of the Act or a derivatives transaction execution facility pursuant to section 5a of the Act in connection with the granting of direct access.

(i) *Swap.* Swap means a swap as defined in section 1a(47) of the Act and any Commission regulation further defining the term adopted thereunder.

(j) *Recommendations for Central Counterparties.* Recommendations for Central Counterparties means:

(1) The current Recommendations for Central Counterparties issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions as updated, revised or otherwise amended; or

(2) Successor standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by the Technical Committee of the International Organization of Securities Commissions and the Committee on Payment and Settlement Systems.

(k) *Affiliate.* An affiliate of a registered foreign board of trade member or other participant means any person, as that term is defined in section 1a(38) of the Act, that:

(1) Owns 50% or more of the member or other participant;

(2) Is owned 50% or more by the member or other participant; or

(3) Is owned 50% or more by a third person that also owns 50% or more of the member or other participant.

(l) *Member or other participant.* Member or other participant means a member or other participant of a foreign board of trade that is registered under this part and any affiliate thereof that has been granted direct access by the foreign board of trade.

§ 48.3 Registration required.

(a) Except as specified in this part, it shall be unlawful for a foreign board of trade to permit direct access to its electronic trading and order matching system unless and until the Commission has issued a valid and current Order of Registration to the foreign board of trade pursuant to the provisions of this part.

(b) It shall be unlawful for a foreign board of trade or the clearing organization to make false or misleading statements in or in connection with any application for registration under this part.

§ 48.4 Registration eligibility and scope.

(a) Only foreign boards of trade eligible to be registered, as defined in § 48.2(b) of this part, are eligible for registration with the Commission pursuant to this part.

(b) A foreign board of trade may apply for registration under this part in order to permit the members and other participants of the foreign board of trade that are located in the United States to enter trades directly into the trading and order matching system of the foreign board of trade, to the extent that such members or other participants are:

(1) Entering orders for the member's or other participant's proprietary accounts;

(2) Registered with the Commission as futures commission merchants and are submitting customer orders to the trading system for execution; or

(3) Registered with the Commission as a commodity pool operator or commodity trading advisor, or are exempt from such registration pursuant to § 4.13 or § 4.14 of this chapter, and are submitting orders for execution on behalf of a United States pool that the member or other participant operates or an account of a United States customer for which the member or other participant has discretionary authority, respectively, provided that a futures commission merchant or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as clearing firm and guarantees, without limitation, all such trades of the commodity pool operator or commodity trading advisor effected through submission of orders to the trading system.

§ 48.5 Registration procedures.

(a) A foreign board of trade seeking registration with the Commission pursuant to this part must electronically file an application for registration with the Secretary of the Commission at its Washington DC headquarters at *FBOTapplications@cftc.gov.*

(b) A complete application for registration must include:

(1) A completed Form FBOT and Form Supplement S–1, as set forth in the Appendix to this part, or any successor forms, and all information and documentation described in such forms; and

(2) Any additional information and documentation necessary, in the discretion of the Commission, to supplement the application including, but not limited to, documentation and

information provided during the course of an on-site visit, as applicable, to the foreign board of trade, the clearing organization and the regulatory authority or authorities, to effectively demonstrate that the foreign board of trade and its clearing organization satisfy the registration requirements set forth in § 48.7.

(c) An applicant for registration must identify with particularity any information in the application that will be subject to a request for confidential treatment and must provide support for any request for confidential treatment pursuant to the procedures set forth in § 145.9 of this chapter.

(d) If, upon review, the Commission finds the application for registration to be complete, the Commission may approve or deny the application. In reviewing the application, the Commission will consider, among other things:

(1) Whether the foreign board of trade is eligible to be registered as defined in § 48.2(b) and;

(2) Whether the foreign board of trade and its clearing organization are subject to comprehensive supervision and regulation by the appropriate governmental authorities in their home country or countries that is comparable to the comprehensive supervision and regulation to which designated contract markets and derivatives clearing organizations are respectively subject under the Act, Commission regulations, and other applicable United States laws and regulations, if any, and;

(3) Any previous Commission findings that the foreign board of trade and its clearing organization are subject to comprehensive supervision and regulation by the appropriate government authorities in their home country or countries that is comparable to the comprehensive supervision and regulation to which designated contract markets and derivatives clearing organizations are subject under the Act, Commission regulations, and other applicable United States laws and regulations, if any; and

(4) Whether the foreign board of trade and its clearing organization have adequately demonstrated that they meet the requirements for registration specified in § 48.7.

(5) The Commission's determination that the foreign board of trade and its clearing organization are subject to comprehensive supervision and regulation by the appropriate government authorities in their home country or countries that is comparable to the comprehensive supervision and regulation to which designated contract markets and derivatives clearing organizations are subject will be based upon a principles-based review conducted in a manner consistent with this part 48 pursuant to which the Commission will look to determine if the government authorities support and enforce regulatory objectives in the oversight of the foreign board of trade and the clearing organization that are substantially equivalent to the regulatory objectives supported and enforced by the Commission in its oversight of designated contract markets and derivatives clearing organizations.

(e) If the Commission approves the application, the Commission will issue an Order of Registration. If the Commission does not approve the application, the Commission will, after appropriate notice and an opportunity to respond, issue a Notice of Action specifying that the application was not approved and setting forth the reasons therefor. The Commission, in its discretion, may impose conditions in the Order of Registration and may, after appropriate notice and an opportunity to respond, amend, suspend, or otherwise restrict the terms of an issued Order of Registration or issue an Order revoking registration.

(f) A foreign board of trade whose application is not approved may reapply for registration 360 days after the issuance of the Notice of Action if the foreign board of trade has addressed any deficiencies in its original application or facts and circumstances relevant to the Commission's review of the application have changed.

§ 48.6 Foreign boards of trade providing direct access pursuant to existing no-action relief.

(a) A foreign board of trade operating pursuant to existing no-action relief as of the effective date of this Part 48 must register with the Commission pursuant to this part in order to continue to provide direct access to its electronic trading and order matching system from the United States.

(b)(1) The application of a foreign board of trade operating pursuant to existing no-action relief must include a complete Form FBOT and Supplement S–1, as set forth in the Appendix to this part. If the foreign board of trade, as part of its application for registration, wishes to rely on information and documentation previously submitted electronically in connection with its request for no-action relief in order to demonstrate that it satisfies the registration requirements set forth in § 48.7, (limited application) the foreign board of trade must:

(i) Specifically identify the information or documentation previously submitted;

(ii) Identify the specific registration requirements set forth in § 48.7 that are satisfied by such information or documentation; and

(iii) Certify that the information remains accurate and current.

(2) If the foreign board of trade wishes to rely on information and documentation previously submitted in hard copy in connection with its application for no-action relief, the foreign board of trade must also resubmit the identified information or documentation. A foreign board of trade that has submitted a complete application for no-action relief that is pending as of February 21, 2012 may also apply for registration pursuant to these limited application procedures.

(c) A foreign board of trade operating pursuant to existing no-action relief must submit a limited application for registration, determined in good faith by the applicant to be complete, within 180 days of February 21, 2012. If, at any time after August 20, 2012 but before a limited application is approved or disapproved, the Commission determines that the application is materially incomplete, the Commission may, after providing the foreign board of trade with notice and an opportunity to respond to the determination of incompleteness, withdraw the existing no-action relief if the Commission determines that the application cannot be made complete in a timely manner. The foreign board of trade may continue to operate pursuant to the existing no-action relief, subject to the terms and conditions contained therein, August 20, 2012, while the Commission is reviewing its application, and until the Commission approves or disapproves the application or otherwise withdraws the existing no-action relief. The no-action relief is automatically withdrawn upon issuance of an Order of Registration or upon disapproval.

§ 48.7 Requirements for registration.

An applicant for registration must demonstrate that it and, where applicable, its clearing organization meet the following requirements. The registration requirements applicable to clearing organizations may alternatively be met by demonstrating that the clearing organization is registered and in good standing with the Commission as a derivatives clearing organization. The Commission, in its discretion, may request additional information and documentation in connection with an application for registration and an applicant for registration must provide

promptly any such additional information or documentation. The Commission, in its discretion, also may impose additional registration requirements that the Commission deems necessary after appropriate notice and opportunity to respond.

(a) Foreign Board of Trade and Clearing Membership:

(1) The members and other participants of the foreign board of trade and its clearing organization are fit and proper and meet appropriate financial and professional standards;

(2) The foreign board of trade and its clearing organization have and enforce provisions to minimize and resolve conflicts of interest; and

(3) The foreign board of trade and its clearing organization have and enforce rules prohibiting the disclosure, both during and subsequent to service on a board or committee, of material non-public information obtained as a result of a member's or other participant's performance of duties as a member of their respective governing boards and significant committees.

(b) The Automated Trading System:

(1) The trading system complies with Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions,

(2) The trade matching algorithm matches trades fairly and timely,

(3) The audit trail captures all relevant data, including changes to orders, and audit trail data is securely maintained and available for an adequate time period,

(4) Adequate and appropriate trade data is made available to users and the public,

(5) The trading system has demonstrated reliability,

(6) Access to the trading system is secure and protected,

(7) There are adequate provisions for emergency operations and disaster recovery,

(8) Trading data is backed up to prevent loss of data, and

(9) Only those futures, option or swap contracts that have been identified to the Commission in the foreign board of trade's application for registration or permitted to be made available for trading by direct access pursuant to the procedures set forth in § 48.10 of this part are made available for trading by direct access.

(c) Terms and Conditions of Contracts to Be Made Available in the United States.

(1) Contracts must meet the following standards:

(i) Contracts must be futures, option or swap contracts that would be eligible to be traded on a designated contract market;

(ii) Contracts must be cleared;

(iii) Contracts must not be prohibited from being traded by United States persons; and

(iv) Contracts must not be readily susceptible to manipulation.

(2) Foreign futures and option contracts on non-narrow-based security indexes must have been certified by the Commission pursuant to the procedures set forth in § 30.13 of this chapter.

(3) Contracts that have the following characteristics must be specifically identified as having such characteristics:

(i) Contracts that are linked to a contract listed for trading on a registered entity as defined in section 1a(40) of the Act, and

(ii) Contracts that have any other relationship with a contract listed for trading on a registered entity (for example, if both the foreign board of trade's and the registered entity's contract settle to the price of the same third party-constructed index).

(d) Settlement and Clearing:

(1) The clearing organization observes the Recommendations for Central Counterparties or is registered with the Commission as a derivatives clearing organization, and

(2) The clearing organization is in good regulatory standing in its home country jurisdiction.

(e) The Regulatory Regimes Governing the Foreign Board of Trade and the Clearing Organization:

(1) The regulatory authorities provide comprehensive supervision and regulation of the foreign board of trade, the clearing organization, and the type of contracts to be made available through direct access that is comparable to the comprehensive supervision and regulation provided by the Commission to designated contract markets, derivatives clearing organizations and such contracts. That is, the regulatory authorities support and enforce regulatory objectives in the oversight of the foreign board of trade, clearing organization and the type of contracts that the foreign board of trade wishes to make available through direct access that are substantially equivalent to the regulatory objectives supported and enforced by the Commission in its oversight of designated contract markets, derivatives clearing organizations, and such products.

(2) The regulatory authorities engage in ongoing regulatory supervision and oversight of the foreign board of trade and its trading system, the clearing organization and its clearing system, and the members, intermediaries and other participants of the foreign board of trade and clearing organization, with respect to, among other things, market integrity, customer protection, clearing and settlement and the enforcement of the rules of the foreign board of trade and the clearing organization.

(3) The regulatory authorities have the power to share information directly with the Commission, upon request, including information necessary to evaluate the continued eligibility of the foreign board of trade for registration and to audit for compliance with the terms and conditions of the registration.

(4) The regulatory authorities have the power to intervene in the market.

(f) The Rules of the Foreign Board of Trade and the Clearing Organization and Enforcement Thereof:

(1) The foreign board of trade and its clearing organization have implemented and enforce rules to ensure compliance with the requirements of registration contained in this part;

(2) The foreign board of trade and its clearing organization have the capacity to detect, investigate, and sanction persons who violate their respective rules;

(3) The foreign board of trade and the clearing organization (or their respective regulatory authorities) have implemented and enforce disciplinary procedures that empower them to recommend and prosecute disciplinary actions for suspected rule violations, impose adequate sanctions for such violations, and provide adequate protections to charged parties pursuant to fair and clear standards;

(4) The foreign board of trade and its clearing organization are authorized by rule or by contractual agreement to obtain, from members and other participants, any information and cooperation necessary to conduct investigations, to effectively enforce their respective rules, and to ensure compliance with the conditions of registration;

(5) The foreign board of trade and its clearing organization have sufficient compliance staff and resources, including by delegation and/or outsourcing to a third party, to fulfill their respective regulatory responsibilities, including appropriate trade practice surveillance, real time market monitoring, market surveillance, financial surveillance, protection of customer funds, enforcement of clearing and settlement provisions and other compliance and regulatory responsibilities;

(6) The foreign board of trade has implemented and enforces rules with respect to access to the trading system

and the means by which the connection thereto is accomplished;

(7) The foreign board of trade's audit trail captures and retains sufficient order and trade-related data to allow its compliance staff to detect trading and market abuses and to reconstruct all transactions within a reasonable period of time;

(8) The foreign board of trade has implemented and enforces rules prohibiting fraud and abusive trading practices including, but not limited to, wash sales and trading ahead;

(9) The foreign board of trade has the capacity to detect and deter, and has implemented and enforces rules relating to, market manipulation, attempted manipulation, price distortion, and other disruptions of the market; and

(10) The foreign board of trade has and enforces rules and procedures that ensure a competitive, open and efficient market and mechanism for executing transactions.

(g) Information Sharing:

(1) The regulatory authorities governing the activities of the foreign board of trade and the clearing organization are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding, or otherwise ensure that substitute information sharing arrangements that are satisfactory to the Commission are in place;

(2) The regulatory authorities governing the activities of the foreign board of trade and the clearing organization are signatories to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations or otherwise commit, in writing, to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission;

(3) The foreign board of trade has executed the International Information Sharing Memorandum of Understanding and Agreement; and

(4) Pursuant to the conditions described in § 48.8(a)(6), the foreign board of trade and clearing organization agree to provide directly to the Commission, upon request, any information necessary, in the discretion of the Commission, to evaluate the continued eligibility and appropriateness of the foreign board of trade and the clearing organization, or their respective members or other participants for registration, to audit for and enforce compliance with the requirements and conditions of the registration, or to enable the Commission to carry out its duties under the Act and Commission regulations.

§ 48.8 Conditions of registration.

Upon registration under this part, and on an ongoing basis thereafter, the foreign board of trade and the clearing organization shall comply with the applicable conditions of registration set forth in this section and any additional conditions that the Commission deems necessary and may impose, in its discretion, and after appropriate notice and opportunity to respond. Such conditions could include, but are not limited to, additional conditions applicable to the listing of swap contracts. Continued registration is expressly conditioned upon satisfaction of these conditions.

(a) Specified Conditions for Maintaining Registration

(1) Registration Requirements: The foreign board of trade and its clearing organization shall continue to satisfy all of the requirements for registration set forth in § 48.7.

(2) Regulatory Regime:

(i) The foreign board of trade will continue to satisfy the criteria for a regulated market or licensed exchange pursuant to the regulatory regime described in its application and will continue to be subject to oversight by the regulatory authorities described in its application.

(ii) The clearing organization will continue to satisfy the criteria for a regulated clearing organization pursuant to the regulatory regime described in the application for registration and will continue to be in good standing with the relevant regulatory authority.

(iii) The laws, systems, rules, and compliance mechanisms of the regulatory regime applicable to the foreign board of trade will continue to require the foreign board of trade to maintain fair and orderly markets; prohibit fraud, abuse, and market manipulation and other disruptions of the market; and provide that such requirements are subject to the oversight of appropriate regulatory authorities.

(3) Satisfaction of International Standards:

(i) The foreign board of trade will continue to comply with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions, as updated, revised, or otherwise amended, to the extent such principles do not contravene United States law.

(ii) The clearing organization will continue to:

(A) Be registered with the Commission as a derivatives clearing organization and be in compliance with the laws and regulations related thereto; or

(B) Observe the Recommendations for Central Counterparties.

(4) Restrictions on Direct Access:

(i) Only the foreign board of trade's identified members or other participants will have direct access to the foreign board of trade's trading system from the United States and the foreign board of trade will not provide, and will take reasonable steps to prevent, third parties from providing direct access to persons other than the identified members or other participants.

(ii) All orders that are transmitted to the foreign board of trade's trading system by a foreign board of trade's identified member or other participant that is operating pursuant to the foreign board of trade's registration will be solely for the member's or trading participant's own account unless such member or other participant is registered with the Commission as a futures commission merchant or such member or other participant is registered with the Commission as a commodity pool operator or commodity trading advisor, or is exempt from such registration pursuant to § 4.13 or § 4.14 of this chapter, provided that a futures commission merchant or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as clearing firm and guarantees, without limitation, all such trades of the commodity pool operator or commodity trading advisor effected through submission of orders on the trading system.

(5) Submission to Commission Jurisdiction:

(i) Prior to operating pursuant to registration under this part and on a continuing basis thereafter, a registered foreign board of trade will require that each current and prospective member or other participant that is granted direct access to the foreign board of trade's trading system and that is not registered with the Commission as a futures commission merchant, a commodity trading advisor or a commodity pool operator, file with the foreign board of trade a written representation, executed by a person with the authority to bind the member or other participant, stating that as long as the member or other participant is authorized to enter orders directly into the trade matching system of the foreign board of trade, the member or other participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the registration.

(ii) The foreign board of trade and its clearing organization will file with the Commission a valid and binding appointment of an agent for service of process in the United States pursuant to which the agent is authorized to accept delivery and service of communications, as defined in § 48.2(e) issued by or on behalf of the Commission, the United States Department of Justice, or the National Futures Association.

(iii) The foreign board of trade, clearing organization, and each current and prospective member or other participant that is granted direct access to the foreign board of trade's trading system and that is not registered with the Commission as a futures commission merchant, a commodity trading advisor, or a commodity pool operator will maintain with the foreign board of trade written representations, executed by persons with the authority to bind the entity making them, stating that as long as the foreign board of trade is registered under this regulation, the foreign board of trade, the clearing organization or member of either or other participant granted direct access pursuant to this regulation will provide, upon the request of the Commission, the United States Department of Justice and, if appropriate, the National Futures Association, prompt access to the entity's, member's, or other participant's original books and records or, at the election of the requesting agency, a copy of specified information containing such books and records, as well as access to the premises where the trading system is available in the United States.

(iv) The foreign board of trade will maintain all representations required pursuant to § 48.8(a)(5) as part of its books and records and make them available to the Commission upon request.

(6) Information Sharing:

(i) Information-sharing arrangements satisfactory to the Commission, including but not limited to those set forth in § 48.7(g), are in effect between the Commission and the regulatory authorities that govern the activities of both the foreign board of trade and the clearing organization.

(ii) The Commission is, in fact, able to obtain sufficient information regarding the foreign board of trade, the clearing organization, their respective members and participants and the activities related to the foreign board of trade's registration.

(iii) The foreign board of trade and its clearing organization, as applicable, will provide directly to the Commission any information necessary to evaluate the continued eligibility and appropriateness of the foreign board of trade for registration, the capability and determination to enforce compliance with the requirements and conditions of the registration, or to enable the Commission to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or United States registered entities.

(iv) In the event that the foreign board of trade and the clearing organization are separate entities, the foreign board of trade will require the clearing organization to enter into a written agreement in which the clearing organization is contractually obligated to promptly provide any and all information and documentation that may be required of the clearing organization under this regulation and such agreement shall be made available to the Commission, upon request.

(7) Monitoring for Compliance: The foreign board of trade and the clearing organization will employ reasonable procedures for monitoring and enforcing compliance with the specified conditions of its registration.

(8) On-Site Visits: The foreign board of trade and the clearing organization will permit and will cooperate with Commission staff with respect to on-site visits for the purpose of overseeing ongoing compliance of the foreign board of trade and the clearing organization with registration requirements and conditions of registration.

(9) Conditions Applicable to Swap Trading:

(i) The foreign board of trade will ensure that all transaction data relating to each swap transaction, including price and volume, are reported as soon as technologically practicable after execution of the swap transaction to a swap data repository that is either registered with the Commission or has an information sharing arrangement with the Commission.

(ii) The foreign board of trade will agree to coordinate with the Commission with respect to arrangements established to address cross market oversight issues involving swap trading, including surveillance, emergency actions and the monitoring of trading.

(b) Other Continuing Obligations.

(1) Registered foreign boards of trade and their clearing organizations will continue to comply with the following obligations on an ongoing basis:

(i) The foreign board of trade will maintain the following updated information and submit such information to the Commission on at least a quarterly basis, not later than 30 days following the end of the quarter, and at any time promptly upon the request of a Commission representative, computed based upon separating buy sides and sell sides, in a format as determined by the Commission:

(A) For each contract available to be traded through the foreign board of trade's trading system;

(*1*) The total trade volume originating from electronic trading devices providing direct access;

(*2*) The total trade volume for such contracts traded through the trading system worldwide;

(*3*) The total trade volume for such contracts traded on the foreign board of trade generally; and

(B) A listing of the names, National Futures Association identification numbers (if applicable), and main business addresses in the United States of all members and other participants that have direct access.

(ii) The foreign board of trade will promptly provide to the Commission written notice of the following:

(A) Any material change to the information provided in the foreign board of trade's registration application.

(B) Any material change in the rules of the foreign board of trade or clearing organization or the laws, rules, or regulations in the home country jurisdictions of the foreign board of trade or clearing organization relevant to futures, option or swap contracts made available by direct access.

(C) Any matter known to the foreign board of trade, the clearing organization or its representatives that, in the judgment of the foreign board of trade or clearing organization, may affect the financial or operational viability of the foreign board of trade or its clearing organization with respect to contracts traded by direct access, including, but not limited to, any significant system failure or interruption.

(D) Any default, insolvency, or bankruptcy of any foreign board of trade member or other participant that is or should be known to the foreign board of trade or its representatives or the clearing organization or its representatives that may have a material, adverse impact upon the condition of the foreign board of trade as it relates to trading by direct access, its clearing organization or upon any United States customer or firm or any default, insolvency or bankruptcy of any member of the foreign board of trade's clearing organization.

(E) Any violation of any specified conditions of the foreign board of trade's registration or failure to satisfy the requirements for registration under this part that is known or should be known by the foreign board of trade, the

clearing organization or any of their respective members or participants.

(F) Any disciplinary action by the foreign board of trade or its clearing organization, or any regulatory authority that governs their respective activities, taken against any of their respective members or participants with respect to any contract available to be traded by direct access that involves any market manipulation, abuse, fraud, deceit, or conversion or that results in suspension or expulsion.

(iii) The foreign board of trade and the clearing organization, or their respective regulatory authorities, as applicable, will provide the following to the Commission annually as of June 30 and not later than July 31.

(A) A certification from the foreign board of trade's regulatory authority confirming that the foreign board of trade retains its authorization, licensure or registration, as applicable, as a regulated market and/or exchange under the authorization, licensing, recognition or other registration methodology used by the foreign board of trade's regulatory authority and that the foreign board of trade is in continued good standing.

(B) If the clearing organization is not a derivatives clearing organization registered with the Commission, a certification from the clearing organization's regulatory authority confirming that the clearing organization retains its authorization, licensure or registration, as applicable, as a clearing organization under the authorization, licensing or other registration methodology used by the clearing organization's regulatory authority and is in continued good standing.

(C) If the clearing organization is not a derivatives clearing organization registered with the Commission, a recertification of the clearing organization's observance of the Recommendations for Central Counterparties.

(D) A certification that affiliates, as defined in § 48.2(k), continue to be required to comply with the rules of the foreign board of trade and clearing organization and that the members or other participants to which they are affiliated remain responsible to the foreign board of trade for ensuring their affiliates' compliance.

(E) A description of any material changes regarding the foreign board of trade or clearing organization that have not been previously disclosed, in writing, to the Commission, or a certification that no such material changes have occurred.

(F) A description of any significant disciplinary or enforcement actions that have been instituted by or against the foreign board of trade or the clearing organization or the senior officers of either during the prior year.

(G) A written description of any material changes to the regulatory regime to which the foreign board of trade or the clearing organization are subject that have not been previously disclosed, in writing, to the Commission, or a certification that no material changes have occurred.

(2) The above-referenced annual reports must be signed by an officer of the foreign board of trade or the clearing organization who maintains the authority to bind the foreign board of trade or clearing organization, as applicable, and must be based on the officer's personal knowledge.

(c) Additional Specified Conditions for Foreign Boards of Trade with Linked Contacts. If a registered foreign board of trade grants members or other participants direct access and makes available for trading a linked contract, the following additional conditions apply:

(1) Statutory Conditions.

(i) The foreign board of trade will make public daily trading information regarding the linked contract that is comparable to the daily trading information published by the registered entity for the contract to which the foreign board of trade's contract is linked, and

(ii) The foreign board of trade (or its regulatory authority) will:

(A) Adopt position limits (including related hedge exemption provisions) applicable to all market participants for the linked contract that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the contract to which it is linked;

(B) Have the authority to require or direct any market participant to limit, reduce, or liquidate any position the foreign board of trade (or its regulatory authority) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a of the Act, price distortion, or disruption of delivery on the cash settlement process;

(C) Agree to promptly notify the Commission, with regard to the linked contract, of any change regarding—

(*1*) The information that the foreign board of trade will make publicly available,

(*2*) The position limits that foreign board of trade or its regulatory authority will adopt and enforce,

(*3*) The position reductions required to prevent manipulation, excessive speculation as described in section 4a of the Act, price distortion, or disruption of delivery or the cash settlement process, and

(*4*) Any other area of interest expressed by the Commission to the foreign board of trade or its regulatory authority;

(D) Provide information to the Commission regarding large trader positions in the linked contract that is comparable to the large trader position information collected by the Commission for the contract to which it is linked; and

(E) Provide the Commission such information as is necessary to publish reports on aggregate trader positions for the linked contract that are comparable to such reports on aggregate trader positions for the contract to which it is linked.

(2) Other Conditions on Linked Contracts.

(i) The foreign board of trade will inform the Commission in a quarterly report of any member that had positions in a linked contract above the applicable foreign board of trade position limit, whether a hedge exemption was granted, and if not, whether a disciplinary action was taken.

(ii) The foreign board of trade will provide the Commission, either directly or through its agent, with trade execution and audit trail data for the Commission's Trade Surveillance System on a trade-date plus one basis and in a form, content and manner acceptable to the Commission for all linked contracts.

(iii) The foreign board of trade will provide to the Commission, at least one day prior to the effective date thereof, except in the event of an emergency market situation, copies of, or hyperlinks to, all rules, rule amendments, circulars and other notices published by the foreign board of trade with respect to all linked contracts.

(iv) The foreign board of trade will provide to the Commission copies of all reports of disciplinary action involving the foreign board of trade's linked contracts upon closure of the action. Such reports should include the reason the action was undertaken, the results of the investigation that led to the disciplinary action, and any sanctions imposed.

(v) In the event that the Commission, pursuant to its emergency powers authority, directs that the registered entity which lists the contract to which the foreign board of trade's contract is linked to take emergency action with respect to a linked contract (for example, to cease trading in the contract), the foreign board of trade, subject to information-sharing

arrangements between the Commission and its regulatory authority, will promptly take similar action with respect to the its linked contract.

§ 48.9 Revocation of registration.

(a) Failure to Satisfy Registration Requirements or Conditions:

(1) If the Commission determines that a registered foreign board of trade or the clearing organization has failed to satisfy any registration requirements or conditions for registration, the Commission shall notify the foreign board of trade of such determination, including the particular requirements or conditions that are not being satisfied, and shall afford the foreign board of trade or clearing organization an opportunity to make appropriate changes to bring it into compliance.

(2) If, not later than 30 days after receiving a notification under paragraph (a)(1) of this section, the foreign board of trade or clearing organization fails to make changes that, in the opinion of the Commission, are necessary to comply with the registration requirements or conditions of registration, the Commission may revoke the foreign board of trade's registration, after appropriate notice and an opportunity to respond, by issuing an Order Revoking Registration which sets forth the reasons therefor.

(3) A foreign board of trade whose registration has been revoked for failure to satisfy a registration requirement or condition of registration may apply for re-registration 360 days after the issuance of the Order Revoking Registration if the deficiency causing the revocation has been cured or relevant facts and circumstances have changed.

(b) Other Events that Could Result in Revocation. Notwithstanding § 48.9(a), revocation under these circumstances will be handled by the Commission as relevant facts or circumstances warrant.

(1) The Commission may revoke a foreign board of trade's registration, after appropriate notice and an opportunity to respond, if the Commission determines that a representation made in the foreign board of trade's application for registration is found to be untrue or materially misleading or if the foreign board of trade failed to include information in the application that would have been material to the Commission's determination as to whether to issue an Order of Registration.

(2) The Commission may revoke a foreign board of trade's registration, after appropriate notice and an opportunity to respond, if there is a material change in the regulatory regime applicable to the foreign board of trade or clearing organization such that the regulatory regime no longer satisfies any registration requirement or condition for registration applicable to the regulatory regime.

(3) The Commission may revoke a foreign board of trade's registration in the event of an emergency or in a circumstance where the Commission determines that revocation would be necessary or appropriate in the public interest. Following revocation, the Commission will provide notice and an opportunity to respond.

(4) The Commission may revoke a foreign board of trade's registration in the event the foreign board of trade or the clearing organization is no longer authorized, licensed or registered, as applicable, as a regulated market and/or exchange or clearing organization or ceases to operate as a foreign board of trade or clearing organization, subject to notice and an opportunity to respond.

(c) Upon request by the Commission, a registered foreign board of trade must file with the Commission a written demonstration, containing such supporting data, information, and documents, in such form and manner and within such timeframe as the Commission may specify, that the foreign board of trade or clearing organization is in compliance with the registration requirements and/or conditions for registration.

§ 48.10 Additional contracts.

(a) *Generally.* A registered foreign board of trade that wishes to make an additional futures, option or swap contract available for trading by identified members or other participants located in the United States with direct access to its electronic trading and order matching system must submit a written request prior to offering the contracts from within the United States. Such a written request must include the terms and conditions of the additional futures, option or swap contracts and a certification that the additional contracts meet the requirements of § 48.8(c), if applicable, and that the foreign board of trade and the clearing organization continue to satisfy the requirements and conditions of registration. The foreign board of trade can make available for trading by direct access the additional contracts ten business days after the date of receipt by the Commission of the written request, unless the Commission notifies the foreign board of trade that additional time is needed to complete its review of policy or other issues pertinent to the additional contracts. A registered foreign board of trade may list for trading by direct access an additional futures or option contract on a non-narrow-based security index pursuant to the Commission certification procedures set forth in § 30.13(d) and Appendix D to Part 30 of this chapter.

(b) *Option contracts on previously approved futures contracts.* (1) If the option is on a futures contract that is not a linked contract, the option contract may be made available for trading by direct access by filing with the Commission no later than the business day preceding the initial listing of the contract:

(i) A copy of the terms and conditions of the additional contract and

(ii) A certification that the foreign board of trade and the clearing organization continue to satisfy the conditions of its registration.

(2) If the option is on a futures contract that is a linked contract, the option contract may be made available for trading by direct access by filing with the Commission no later than the business day preceding the initial listing of the contract:

(i) A copy of the terms and conditions of the additional contract; and

(ii) A certification that the foreign board of trade and the clearing organization continue to satisfy the conditions of its registration, including the conditions specifically applicable to linked contracts set forth in § 48.8(c).

(3) If the option is on a non-narrow-based security index futures contract which may be offered or sold in the United States pursuant to a Commission certification issued pursuant to § 30.13 of this chapter, the option contract may be listed for trading by direct access without further action by either the registered foreign board of trade or the Commission.

Appendix to Part 48—Form FBOT

COMMODITY FUTURES TRADING COMMISSION

FORM FBOT

FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION (IN ORDER TO PERMIT DIRECT ACCESS TO MEMBERS AND OTHER PARTICIPANTS)

APPLICATION INSTRUCTIONS

DEFINITIONS

1. Unless the context requires otherwise, all terms used in this application have the same meaning as in the Commodity Exchange Act, as

amended (CEA or Act),[1] and in the regulations of the Commodity Futures Trading Commission (Commission or CFTC).[2]

2. For the purposes of this Form FBOT, the term ''applicant'' refers to the foreign board of trade applying for registration pursuant to CEA section 4(b) and part 48 of the Commission's regulations. The term ''clearing organization'' refers to the clearing organization that will be clearing trades executed on the trading system of such foreign board of trade.

GENERAL INSTRUCTIONS

1. A Form FBOT (including exhibits) shall be completed by any foreign board of trade applying for registration with the Commission pursuant to CEA section 4(b) and part 48 of the Commission's regulations.

2. Form FBOT (including exhibits and any supplement thereto) (collectively, the ''application'' or ''application for registration'') must be filed electronically with the Secretary of the Commission at *FBOTapplications@cftc.gov.* Applicants may prepare their own Form FBOT, but must follow the format prescribed herein.

3. The name of any individual listed in Form FBOT shall be provided in full (Last Name, First Name and Middle Name or Initial).

4. Form FBOT must be signed by the Chief Executive Officer (or the functional equivalent) of the foreign board of trade who must possess the authority to bind the foreign board of trade.

5. If this Form FBOT is being filed as a new application for registration, all applicable items on the Form FBOT must be answered in full. Non-applicable items should be indicated by marking ''none'' or ''N/A.''

6. Submission of a complete Form FBOT (including all information, documentation and exhibits requested therein, and any required supplement) is mandatory and must be received by the Commission before it will begin to process a foreign board of trade's application for registration. The information provided with a Form FBOT (including exhibits and any supplement thereto) will be used to determine whether the Commission should approve or deny registration to an applicant. Pursuant to its regulations, the Commission may determine that information and/or documentation in addition to that requested in the Form FBOT is required from the applicant in order to process the application for registration or to determine whether registration is appropriate.

7. Pursuant to Commission regulations, an applicant or its clearing organization must identify with particularity any information in the application (including, but not limited to, any information contained in this Form FBOT) that will be the subject of a request for confidential treatment and must provide support for any request for confidential treatment pursuant to the procedures set forth in Commission regulation 145.9.[3] Except in cases where confidential treatment is granted by the Commission pursuant to the Freedom of Information Act and Commission regulations, information supplied in the Form FBOT (including exhibits and any supplement thereto) will be included routinely in the public files of the Commission and will be available for inspection and comment by any interested person.

8. A Form FBOT that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing.[4] Acceptance of a Form FBOT by the Commission, however, shall not constitute a finding that the Form FBOT has been filed as required or that the information submitted is verified to be true, current, or complete. The Commission may revoke a foreign board of trade's registration, after appropriate notice and an opportunity to respond, if the Commission determines that a representation made in this Form FBOT is found to be untrue or materially misleading or if the foreign board of trade failed to include information in this Form FBOT that would have been material to the Commission's determination as to whether to issue an Order of Registration.

9. In addition to this Form FBOT, the clearing organization associated with the foreign board of trade must complete and submit Supplement S–1 to this Form FBOT in accordance with the instructions thereto. To the extent a single document or description is responsive to more than one request for the same information in either the Form FBOT or the Supplement S–1, the document or description need only be provided once and may be cross-referenced elsewhere.

10. All documents submitted as part of this Form FBOT (or exhibits thereto) must be written in English or accompanied by a certified English translation.

UPDATING INFORMATION ON THE FORM FBOT

Pursuant to the Commission's regulations, if any information or documentation contained in this Form FBOT (including exhibits or any supplement or amendment thereto) is or becomes inaccurate for any reason prior to the issuance of an Order of Registration, an amendment correcting such information must be filed promptly with the Commission. A registered foreign board of trade also may submit an amendment to this Form FBOT to correct information that has become inaccurate subsequent to the receipt of an Order of Registration.

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[1] 7 U.S.C. 1 et seq.

[2] 17 CFR chapter I.

[3] 17 CFR 145.9.

[4] Applicants and their clearing organizations are encouraged to correspond with the Commission's Division of Market Oversight regarding any content, procedural, or formatting questions encountered in connection with the preparation of a Form FBOT, or any exhibits or supplements thereto, prior to formally submitting those documents to the Commission. When appropriate, potential applicants and clearing organizations, as applicable, may provide a complete draft Form FBOT (including exhibits and any required supplement) to the Division of Market Oversight for early review to minimize the risk of having a submission returned or otherwise denied as not acceptable for filing. Review of draft submissions by any division of the Commission and any comments provided by a division of the Commission are for consultation purposes only and do not bind the Commission. To obtain instructions for submitting drafts, please contact the Division of Market Oversight.

COMMODITY FUTURES TRADING COMMISSION

FORM FBOT

FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION (IN ORDER TO PERMIT DIRECT ACCESS TO MEMBERS AND OTHER PARTICIPANTS)

_____

Name of applicant as specified in organizational documents

_____

Address of principal executive office

☐ If this Form FBOT is a new application for registration, complete in full and check here.

☐ If this Form FBOT is an amendment to a pending application or to a final application that resulted in the issuance of an Order of Registration, list and/or describe all items that are amended or otherwise updated and check here.

When appropriate, please attach additional page(s) containing a list and explanatory statement of amendment(s) or update(s).

GENERAL INFORMATION

1. Name under which the business of the foreign board of trade will be conducted, if different than name specified above:

_____

2. List of principal office(s) where foreign board of trade activities are/will be conducted (please use multiple entries, when applicable):

Office (name and/or location): _____

Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

Website Address: _____

3. Contact Information.

3a. Primary Contact for Form FBOT (i.e., the person authorized to receive Commission correspondence in connection with this Form FBOT and to whom questions regarding the submission should be directed):

Name: _____

Title: _____

Email Address: _____

Mailing Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

3b. If different than above, primary contact at the foreign board of trade that is authorized to receive all forms of Commission correspondence:

Name: _____

Title: _____

Email Address: _____

Mailing Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

BUSINESS ORGANIZATION

Describe organizational history, including date and, if applicable, location of filing of original organizational documentation, and describe all substantial amendments or changes thereto. For example:

[Foreign Board of Trade] is a [corporation, partnership, limited liability company, or other applicable organizational designation], having filed its [articles of incorporation, certificate of formation, articles of organization, other applicable organizational formation document] with the [applicable regulatory body] in [city, state/province, country] on [applicable date].

SIGNATURES

By signing and submitting this Form FBOT, the applicant agrees to and consents that the notice of any proceeding before the Commission in connection with the foreign board of trade's application for registration or registration with the Commission may be given by sending such notice by certified mail or similar secured correspondence to the persons specified in sections 3a and 3b above.

_____ [Name of the Foreign Board of Trade] has duly caused this Form FBOT to be signed on its behalf by the undersigned, hereunto duly authorized, this _____ [Number] day of _____ [Month], _____ [Year]. _____ [Name of the Foreign Board of Trade] and the undersigned represent that all information and representations contained herein are true, current, and complete. It is understood that all information, documentation, and exhibits are considered integral parts of this Form FBOT. The submission of any amendment to Form FBOT represents that all items and exhibits not so amended remain true, current, and complete as previously filed.

_____

Signature of Chief Executive Officer (or functional equivalent), on behalf of the Foreign Board of Trade

_____

Title

_____

Name of Foreign Board of Trade

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INSTRUCTIONS FOR EXHIBITS TO FORM FBOT

1. The following exhibits must be filed with the Commission by any foreign board of trade (1) seeking registration for purposes of granting direct access to its members and other participants or (2) amending a

previously submitted application, pursuant to CEA section 4(b) and part 48 of the Commission's regulations. The information and documentation requested relates to the activities of the foreign board of trade, unless otherwise stated.

2. The exhibits should be filed in accordance with the General Instructions to this Form FBOT and labeled as specified herein. If any exhibit is not applicable, please specify the exhibit letter and number and indicate by marking ''none'' or ''N/A.'' If any exhibit may be satisfied by documentation or information submitted in a different exhibit, the documentation or information need not be submitted more than once—please use internal cross-references where appropriate.

GENERAL REQUIREMENTS

A foreign board of trade applying for registration must submit sufficient information and documentation to successfully demonstrate to Commission staff that the foreign board of trade and its clearing organization satisfy all of the requirements of Commission regulation 48.7. With respect to its review of the foreign board of trade, the Commission anticipates that such information and documentation would necessarily include, but not be limited to, the following:

EXHIBIT A—GENERAL INFORMATION AND DOCUMENTATION

Attach, as **Exhibit A–1,** a description of the following for the foreign board of trade: Location, history, size, ownership and corporate structure, governance and committee structure, current or anticipated presence of offices or staff in the United States, and anticipated volume of business emanating from members and other participants that will be provided direct access to the foreign board of trade's trading system.

Attach, as **Exhibit A–2,** the following:

Articles of association, constitution, or other similar organizational documents.

Attach, as **Exhibit A–3,** the following:

(1) Membership and trading participant agreements.

(2) Clearing agreements.

Attach, as **Exhibit A–4,** the following:

Terms and conditions of contracts to be available through direct access (as specified in Exhibit E).

Attach, as **Exhibit A–5,** the following:

The national statutes, laws and regulations governing the activities of the foreign board of trade and its respective participants.

Attach, as **Exhibit A–6,** the following:

The current rules, regulations, guidelines and bylaws of the foreign board of trade.

Attach, as **Exhibit A–7,** the following:

Evidence of the authorization, licensure or registration of the foreign board of trade pursuant to the regulatory regime in its home country jurisdiction and a representation by its regulator(s) that it is in good regulatory standing in the capacity in which it is authorized, licensed or registered.

Attach, as **Exhibit A–8,** the following document:

A summary of any disciplinary or enforcement actions or proceedings that have been brought against the foreign board of trade, or any of the senior officers thereof, in the past five years and the resolution of those actions or proceedings.

Attach, as **Exhibit A–9,** the following document:

An undertaking by the chief executive officer(s) (or functional equivalent[s]) of the foreign board of trade to notify Commission staff promptly if any of the representations made in connection with or related to the foreign board of trade's application for registration cease to be true or correct, or become incomplete or misleading.

EXHIBIT B—MEMBERSHIP CRITERIA

Attach, as **Exhibit B,** the following, separately labeling each description:

(1) A description of the categories of membership and participation in the foreign board of trade and the access and trading privileges provided by the foreign board of trade. The description should include any restrictions applicable to members and other participants to which the foreign board of trade intends to grant direct access to its trading system.

(2) A description of all requirements for each category of membership and participation on the trading system and the manner in which members and other participants are required to demonstrate their compliance with these requirements. The description should include, but not be limited to, the following:

(i) Professional Qualification. A description of the specific professional requirements, qualifications, and/or competencies required of members or other participants and/or their staff and a description of the process by which the foreign board of trade confirms compliance with such requirements.

(ii) Authorization, Licensure and Registration. A description of any regulatory and self-regulatory authorization, licensure or registration requirements that the foreign board of trade imposes upon, or enforces against, its members and other participants including, but not limited to any authorization, licensure or registration requirements imposed by the regulatory regime/authority in the home country jurisdiction(s) of the foreign board of trade. Please also include a description of the process by which the foreign board of trade confirms compliance with such requirements.

(iii) Financial Integrity. A description of the following:

(A) The financial resource requirements, standards, guides or thresholds required of members and other participants.

(B) The manner in which the foreign board of trade evaluates the financial resources/holdings of its members or participants.

(C) The process by which applicants demonstrate compliance with financial requirements for membership or participation including, as applicable:

(*i*) Working capital and collateral requirements, and

(*ii*) Risk management mechanisms for members allowing customers to place orders.

(iv) Fit and Proper Standards. A description of how the foreign board of trade ensures that potential members/other participants meet fit and proper standards.

EXHIBIT C—BOARD AND/OR COMMITTEE MEMBERSHIP

Attach, as **Exhibit C,** the following:

(1) A description of the requirements applicable to membership on the governing board and significant committees of the foreign board of trade.

(2) A description of the process by which the foreign board of trade ensures that potential governing board and committee members/other participants meet these standards.

(3) A description of the provisions to minimize and resolve conflicts of interest with respect to membership on the governing board and significant committees of the foreign board of trade.

(4) A description of the rules with respect to the disclosure of material non-public information obtained as a result of a member's or other participant's performance on the governing board or significant committee.

EXHIBIT D—THE AUTOMATED TRADING SYSTEM

Attach, as **Exhibit D–1,** a description of (or where appropriate, documentation addressing) the following, separately labeling each description:

(1) The order matching/trade execution system, including a complete

description of all permitted ways in which members or other participants (or their customers) may connect to the trade matching/execution system and the related requirements (for example, authorization agreements).

(2) The architecture of the systems, including hardware and distribution network, as well as any pre- and post-trade risk-management controls that are made available to system users.

(3) The security features of the systems.

(4) The length of time such systems have been operating.

(5) Any significant system failures or interruptions.

(6) The nature of any technical review of the order matching/trade execution system performed by the foreign board of trade, the home country regulator, or a third party.

(7) Trading hours.

(8) Types and duration of orders accepted.

(9) Information that must be included on orders.

(10) Trade confirmation and error trade procedures.

(11) Anonymity of participants.

(12) Trading system connectivity with clearing system.

(13) Response time.

(14) Ability to determine depth of market.

(15) Market continuity provisions.

(16) Reporting and recordkeeping requirements.

Attach, as **Exhibit D–2,** a description of the manner in which the foreign board of trade assures the following with respect to the trading system, separately labeling each description:

(1) Algorithm. The trade matching algorithm matches trades fairly and timely.

(2) IOSCO Principles. The trading system complies with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions (IOSCO Principles). Provide a copy of any independent certification received or self-certification performed and identify any system deficiencies with respect to the IOSCO Principles.

(3) Audit Trail.

(i) The audit trail timely captures all relevant data, including changes to orders.

(ii) Audit trail data is securely maintained and available for an adequate time period.

(4) Public Data. Adequate and appropriate trade data is available to users and the public.

(5) Reliability. The trading system has demonstrated reliability.

(6) Secure Access. Access to the trading system is secure and protected.

(7) Emergency Provisions. There are adequate provisions for emergency operations and disaster recovery.

(8) Data Loss Prevention. Trading data is backed up to prevent loss of data.

(9) Contracts Available. Mechanisms are available to ensure that only those futures, option or swap contracts that have been identified to the Commission as part of the application or permitted to be made available for trading by direct access pursuant to the procedures set forth in § 48.10 are made available for trading by direct access.

(10) Predominance of the Centralized Market. Mechanisms are available that ensure a competitive, open, and efficient market and mechanism for executing transactions.

EXHIBIT E—THE TERMS AND CONDITIONS OF CONTRACTS PROPOSED TO BE MADE AVAILABLE IN THE UNITED STATES

Attach, as **Exhibit E–1,** a description of the terms and conditions of futures, option or swap contracts intended to be made available for direct access. With respect to each contract, indicate whether the contract is regulated or otherwise treated as a futures, option or swap contract in the regulatory regime(s) of the foreign board of trade's home country.

As **Exhibit E–2,** demonstrate that the contracts are not prohibited from being traded by United States persons, *i.e.,* the contracts are not prohibited security futures or single stock contracts or narrow-based index contracts. For non-narrow based stock index futures contracts, demonstrate that the contracts have received Commission certification pursuant to the procedures set forth in § 30.13 and Appendix D to part 30 of this chapter.

As **Exhibit E–3,** demonstrate that the contracts are required to be cleared.

As **Exhibit E–4,** identify any contracts that are linked to a contract listed for trading on a United States-registered entity, as defined in section 1a(40) of the Act. A linked contract is a contract that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on such registered entity.

As **Exhibit E–5,** identify any contracts that have any other relationship with a contract listed for trading on a registered entity, *i.e.,* both the foreign board of trade's and the registered entity's contract settle to the price of the same third party-constructed index.

As **Exhibit E–6,** demonstrate that the contracts are not readily susceptible to manipulation. In addition, for each contract to be listed, describe each investigation, action, proceeding or case involving manipulation and involving such contract in the three years preceding the application date, whether initiated by the foreign board of trade, a regulatory or self-regulatory authority or agency or other government or prosecutorial agency. For each such action, proceeding or case, describe the alleged manipulative activity and the current status or resolution thereof.

EXHIBIT F—THE REGULATORY REGIME GOVERNING THE FOREIGN BOARD OF TRADE IN ITS HOME COUNTRY [5] OR COUNTRIES

With respect to each relevant regulatory regime or authority governing the foreign board of trade, attach, as **Exhibit F,** the following (including, where appropriate, an indication as to whether the applicable regulatory regime is dependent on the home country's classification of the product being traded on the foreign board of trade as a future, option, swap, or otherwise, and a description of any difference between the applicable regulatory regime for each product classification type):

(1) A description of the regulatory regime/authority's structure, resources, staff, and scope of authority; the regulatory regime/authority's authorizing statutes, including the source of its authority to supervise the foreign board of trade; the rules and policy statements issued by the regulator with respect to the authorization and continuing oversight of markets, electronic trading systems, and clearing organizations; and the financial protections afforded customer funds.

(2) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to: [6]

[5] Where multiple foreign boards of trade subject to the same regulatory regime/authority and are similarly regulated are applying for registration *at the same time,* a single Exhibit E–1 may be submitted as part of the application for all such foreign boards of trade either by one of the applicant foreign boards of trade or by the regulatory regime/authority with responsibility to oversee each of the multiple foreign boards of trade applying for registration. Where an FBOT applying for registration is located in the same jurisdiction and subject to the same regulatory regime as a registered FBOT, the FBOT applying for registration may include by reference, as part of its application, information about the regulatory regime that is posted on the Commission's Web site. The FBOT applying for registration must certify that the information thus included in the application is directly applicable to it and remains current and valid.

[6] To the extent that any such laws, rules, regulations or policies were provided as part of Exhibit A–5, they need not be duplicated. They may be cross-referenced.

(i) The authorization, licensure or registration of the foreign board of trade.

(ii) The regulatory regime/authority's program for the ongoing supervision and oversight of the foreign board of trade and the enforcement of its trading rules.

(iii) The financial resource requirements applicable to the authorization, licensure or registration of the foreign board of trade and the continued operations thereof.

(iv) The extent to which the IOSCO Principles are used or applied by the regulatory regime/authority in its supervision and oversight of the foreign board of trade or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the applicable trading systems for compliance therewith.

(v) The extent to which the regulatory regime/authority reviews and/or approves the trading rules of the foreign board of trade prior to their implementation.

(vi) The extent to which the regulatory regime/authority reviews and/or approves futures, option or swap contracts prior to their being listed for trading.

(vii) The regulatory regime/authority's approach to the detection and deterrence of abusive trading practices, market manipulation, and other unfair trading practices or disruptions of the market.

(3) A description of the laws, rules, regulations and policies that govern the authorization and ongoing supervision and oversight of market intermediaries who may deal with members and other participants located in the United States participants, including:

(i) Recordkeeping requirements.

(ii) The protection of customer funds.

(iii) Procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.

(4) A description of the regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, and enforce rules applicable to the foreign board of trade.

(5) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S–1), a report confirming that the foreign board of trade and clearing organization are in regulatory good standing, which report should be prepared subsequent to consulting with the regulatory regime/authority governing the activities of the foreign board of trade and any associated clearing organization. The report should include:

(i) Confirmation of regulatory status (including proper authorization, licensure and registration) of the foreign board of trade and clearing organization.

(ii) Any recent oversight reports generated by the regulatory regime/authority that are, in the judgment of the regulatory regime/authority, relevant to the foreign board of trade's status as a registered foreign board of trade.

(iii) Disclosure of any significant regulatory concerns, inquiries or investigations by the regulatory regime/authority, including any concerns, inquiries or investigations with regard to the foreign board of trade's arrangements to monitor trading by members or other participants located in the United States or the adequacy of the risk management controls of the trading or of the clearing system.

(iv) A description of any investigations (formal or informal) or disciplinary actions initiated by the regulatory regime/authority or any other self-regulatory, regulatory or governmental entity against the foreign board of trade, the clearing organization or any of their respective senior officers during the past year.

(6) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S–1), a confirmation that the regulatory regime/authority governing the activities of the foreign board of trade and the clearing organization agree to cooperate with a Commission staff visit subsequent to submission of the application on an ''as needed basis,'' the objectives of which will be to, among other things, familiarize Commission staff with supervisory staff of the regulatory regime/authority; discuss the laws, rules and regulations that formed the basis of the application and any changes thereto; discuss the cooperation and coordination between the authorities, including, without limitation, information sharing arrangements; and discuss issues of concern as they may develop from time to time (for example, linked contracts or unusual trading that may be of concern to Commission surveillance staff).

EXHIBIT G—THE RULES OF THE FOREIGN BOARD OF TRADE AND ENFORCEMENT THEREOF

Attach, as **Exhibit G–1,** the following:

A description of the foreign board of trade's regulatory or compliance department, including its size, experience level, competencies, duties and responsibilities.

Attach, as **Exhibit G–2,** the following:

A description of the foreign board of trade's trade practice rules, including but not limited to rules that address the following—

(1) Capacity of the foreign board of trade to detect, investigate, and sanction persons who violate foreign board of trade rules.

(2) Prohibition of fraud and abuse, as well as abusive trading practices including, but not limited to, wash sales and trading ahead, and other market abuses.

(3) A trade surveillance system appropriate to the foreign board of trade and capable of detecting and investigating potential trade practice violations.

(4) An audit trail that captures and retains sufficient order and trade-related data to allow the compliance staff to detect trading and market abuses and to reconstruct all transactions within a reasonable period of time.

(5) Appropriate resources to conduct real-time supervision of trading.

(6) Sufficient compliance staff and resources, including those outsourced or delegated to third parties, to fulfill regulatory responsibilities.

(7) Rules that authorize compliance staff to obtain, from market participants, information and cooperation necessary to conduct effective rule enforcement and investigations.

(8) Staff investigations and investigation reports demonstrating that the compliance staff investigates suspected rule violations and prepares reports of their finding and recommendations.

(9) Rules determining access requirements with respect to the persons that may trade on the foreign board of trade, and the means by which they connect to it.

(10) The requirement that market participants submit to the foreign board of trade's jurisdiction as a condition of access to the market.

Attach, as **Exhibit G–3,** the following:

A description of the foreign board of trade's disciplinary rules, including but not limited to rules that address the following—

(1) Disciplinary authority and procedures that empower staff to recommend and prosecute disciplinary actions for suspected rule violations and that provide the authority to fine, suspend, or expel any market participant pursuant to fair and clear standards.

(2) The issuance of warning letters and/or summary fines for specified rule violations.

(3) The review of investigation reports by a disciplinary panel or other authority for issuance of charges or

instructions to investigate further, or findings that an insufficient basis exists to issue charges.

(4) Disciplinary committees of the foreign board of trade that take disciplinary action via formal disciplinary processes.

(5) Whether and how the foreign board of trade articulates its rationale for disciplinary decisions.

(6) The sanctions for particular violations and a discussion of the adequacy of sanctions with respect to the violations committed and their effectiveness as a deterrent to future violations.

Attach, as **Exhibit G–4,** the following:

A description of the market surveillance program (and any related rules), addressing the following—

The dedicated market surveillance department or the delegation or outsourcing of that function, including a general description of the staff; the data collected on traders' market activity; data collected to determine whether prices are responding to supply and demand; data on the size and ownership of deliverable supplies; a description of the manner in which the foreign board of trade detects and deters market manipulation; for cash-settled contracts, methods of monitoring the settlement price or value; and any foreign board of trade position limit, position management, large trader or other position reporting system.

EXHIBIT H—INFORMATION SHARING AGREEMENTS AMONG THE COMMISSION, THE FOREIGN BOARD OF TRADE, THE CLEARING ORGANIZATION, AND RELEVANT REGULATORY AUTHORITIES

Attach, as **Exhibit H,** the following:

(1) A description of the arrangements among the Commission, the foreign board of trade, the clearing organization, and the relevant foreign regulatory authorities that govern the sharing of information regarding the transactions that will be executed pursuant to the foreign board of trade's registration with the Commission and the clearing and settlement of those transactions. This description should address or identify whether and how the foreign board of trade, clearing organization, and the regulatory authorities governing the activities of the foreign board of trade and clearing organization agree to provide directly to the Commission information and documentation requested by Commission staff that Commission staff determines is needed:

(i) To evaluate the continued eligibility of the foreign board of trade for registration.

(ii) To enforce compliance with the specified conditions of the registration.

(iii) To enable the CFTC to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or registered entities.

(iv) To respond to potential market abuse associated with trading by direct access on the registered foreign board of trade.

(v) To enable Commission staff to effectively accomplish its surveillance responsibilities with respect to a registered entity where Commission staff, in its discretion, determines that a contract traded on a registered foreign board of trade may affect such ability.

(2) A statement as to whether and how the foreign board of trade has executed the International Information Sharing Memorandum of Understanding and Agreement.

(3) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding. If not, describe any substitute information-sharing arrangements that are in place.

(4) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations. If not, a statement as to whether and how they have committed to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission, whether pursuant to an existing memorandum of understanding or some other arrangement.

EXHIBIT I—ADDITIONAL INFORMATION AND DOCUMENTATION

Attach, as **Exhibit I**, any additional information or documentation necessary to demonstrate that the requirements for registration applicable to the foreign board of trade set forth in Commission regulation 48.7 are satisfied.

Continuation of Appendix to Part 48—Supplement S–1 to Form FBOT

COMMODITY FUTURES TRADING COMMISSION

SUPPLEMENT S–1 to FORM FBOT

CLEARING ORGANIZATION SUPPLEMENT TO FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION

SUPPLEMENT INSTRUCTIONS

DEFINITIONS

1. Unless the context requires otherwise, all terms used in this supplement have the same meaning as in the Commodity Exchange Act, as amended (CEA or Act),[7] and in the regulations of the Commodity Futures Trading Commission (Commission or CFTC).[8]

2. For the purposes of this Supplement S–1, the term ''applicant'' refers to the foreign board of trade applying for registration pursuant to CEA section 4(b) and part 48 of the Commission's regulations. The term ''clearing organization'' refers to the clearing organization that will be clearing trades executed on the trading system of such foreign board of trade.

GENERAL INSTRUCTIONS

1. A Supplement S–1 (including exhibits) shall be completed by each clearing organization that will be clearing trades executed on the trading system of a foreign board of trade applying for registration with the Commission pursuant to CEA section 4(b) and part 48 of the Commission's regulations. Each clearing organization shall submit a separate Supplement S–1.

2. In the event that the clearing functions of the foreign board of trade applying for registration will be performed by the foreign board of trade itself, the foreign board of trade shall complete this Supplement S–1, but need not duplicate information provided on its Form FBOT. Specific reference to or incorporation of information or documentation (including exhibits) on the associated Form FBOT, where appropriate, is acceptable. To the extent a singular document or description is responsive to more than one request for information in this Supplement S–1, the document or description need only be provided once and may be cross-referenced elsewhere.

3. Supplement S–1, including exhibits, should accompany the foreign board of trade's Form FBOT and must

[7] 7 U.S.C. 1 et seq.

[8] 17 CFR chapter I.

be filed electronically with the Secretary of the Commission at *FBOTapplications@cftc.gov.* Clearing organizations may prepare their own Supplement S–1, but must follow the format prescribed herein.

4. The name of any individual listed in Supplement S–1 shall be provided in full (Last Name, First Name and Middle Name or Initial).

5. Supplement S–1 must be signed by the Chief Executive Officer (or the functional equivalent) of the clearing organization who must possess the authority to bind the clearing organization.

6. If this Supplement S–1 is being filed in connection with a new application for registration, all applicable items must be answered in full. If any item is not applicable, indicate by marking ''none'' or ''N/A.''

7. Submission of a complete Form FBOT and Supplement S–1 (including all information, documentation and exhibits requested therein) is mandatory and must be received by the Commission before it will begin to process a foreign board of trade's application for registration. The information provided with a Form FBOT and Supplement S–1 will be used to determine whether the Commission should approve or deny registration to an applicant. Pursuant to its regulations, the Commission may determine that information and/or documentation in addition to that requested in the Form FBOT and Supplement S–1 is required from the applicant and/or its clearing organization(s) in order to process the application for registration or to determine whether registration is appropriate.

8. Pursuant to Commission regulations, an applicant or its clearing organization must identify with particularity any information in the application (including, but not limited to, any information contained in this Supplement S–1), that will be the subject of a request for confidential treatment and must provide support for any request for confidential treatment pursuant to the procedures set forth in Commission regulation 145.9.[9] Except in cases where confidential treatment is granted by the Commission, pursuant to the Freedom of Information Act and Commission regulations, information supplied in the Supplement S–1 will be included routinely in the public files of the Commission and will be available for inspection by any interested person.

9. A Supplement S–1 that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing.[10] Acceptance of either a Form FBOT or Supplement S–1 by the Commission, however, shall not constitute a finding that the either have been filed as required or that the information submitted is verified to be true, current, or complete. The Commission may revoke a foreign board of trade's registration, after appropriate notice and an opportunity to respond, if the Commission determines that a representation made in this Supplement S–1 is found to be untrue or materially misleading or if the foreign board of trade and/or clearing organization failed to include information in this Supplement S–1 that would have been material to the Commission's determination as to whether to issue an Order of Registration.

10. All documents submitted as part of this Supplement S–1 (or exhibits thereto) must be written in English or accompanied by a certified English translation.

UPDATING INFORMATION

Pursuant to the Commission's regulations, if any information or documentation contained in this Supplement S–1 (including exhibits) is or becomes inaccurate for any reason prior to the issuance of an Order of Registration, an amendment correcting such information must be filed promptly with the Commission. A clearing organization also may submit an amendment to this Supplement S–1 to correct information that has become inaccurate subsequent to the issuance of an Order of Registration.

BILLING CODE 6351–01–P

[9] 17 CFR 145.9.

[10] Applicants and their clearing organizations are encouraged to correspond with the Commission's Division of Market Oversight regarding any content, procedural, or formatting questions encountered in connection with the preparation of a Form FBOT, Supplement S–1, or exhibits thereto prior to formally submitting those documents to the Commission. When appropriate, potential applicants and clearing organizations, as applicable, may provide a complete draft Form FBOT and Supplement S–1 to the Division of Market Oversight for early review to minimize the risk of having a submission returned or otherwise denied as not acceptable for filing. Review of draft submissions by any division of the Commission and any comments provided by a division of the Commission are for consultation purposes only and do not bind the Commission. To obtain instructions for submitting drafts, please contact the Division of Market Oversight.

COMMODITY FUTURES TRADING COMMISSION

SUPPLEMENT S-1 to FORM FBOT

CLEARING ORGANIZATION SUPPLEMENT TO

FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION

_____

Name of clearing organization as specified in organizational documents

_____

Address of principal executive office

_____

Name of the foreign board of trade on associated Form FBOT

☐ If this Supplement S-1 is accompanying a new application for registration, please complete in full and check here.

☐ If this Supplement S-1 is an amendment to a pending application for registration, or to a final application that resulted in the issuance of an Order of Registration, please list all items that are amended or otherwise updated and check here.

When appropriate, please attach additional page(s) containing a list and explanatory statement of amendment(s) or update(s).

REGISTERED DERIVATIVES CLEARING ORGANIZATIONS

If the clearing organization is registered with the Commission in good standing as a derivatives clearing organization (DCO), please indicate by checking here:

☐ CFTC-registered DCO.

If the clearing organization is registered with the Commission in good standing as a DCO, the clearing organization need not complete the remainder of the Supplement S-1.

GENERAL INFORMATION

1. Name under which the business of the clearing organization will be conducted, if different than name specified above:

_____

2. List of principal office(s) where clearing organization activities are/will be conducted (please use multiple entries, when applicable):

Office (name and/or location): _____

Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

Website Address: _____

3. Contact Information.

3a. Primary Contact for Supplement S-1 (i.e., the person authorized to receive Commission correspondence in connection with this Supplement S-1 and to whom questions regarding the submission should be directed):

Name: _____

Title: _____

Email Address: _____

Mailing Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

3b. If different than above, primary contact at the clearing organization that is authorized to receive all forms of Commission correspondence:

Name: _____

Title: _____

Email Address: _____

Mailing Address: _____

_____

_____

Phone Number: _____

Fax Number: _____

BUSINESS ORGANIZATION

Describe organization history, including date and, if applicable, location of filing of original organizational documentation, and describe all substantial amendments or changes thereto. For example:

[Clearing organization] is a [corporation, partnership, limited liability company, or other applicable organizational designation], having filed its [articles of incorporation, certificate of formation, articles of organization, other applicable organizational formation document] with the [applicable regulatory body] in [city, state/province, country] on [applicable date].

SIGNATURES

By signing and submitting this Supplement S-1, the clearing organization agrees to and consents that the notice of any proceeding before the Commission in connection with the associated foreign board of trade's application for registration or registration with the Commission may be given by sending such notice by certified mail or similar secured correspondence to the persons specified in sections 3a and 3b above.

_____ [Name of the Clearing Organization] has duly caused this Supplement S-1 to be signed on its behalf by the undersigned, hereunto duly authorized, this _____ [Number] day of _____ [Month], _____ [Year].

_____ [Name of the Clearing Organization] and the undersigned represent that all information and representations contained in this Supplement S-1 (and exhibits) are true, current, and complete. It is understood that all information, documentation, and exhibits are considered integral parts of this Supplement S-1. The submission of any amendment to a Supplement S-1 represents that all items and exhibits not so amended remain true, current, and complete as previously filed.

_____

Signature of Chief Executive Officer (or functional equivalent), on behalf of the Clearing Organization

_____

Title

_____

Name of Clearing Organization

BILLING CODE 6351–01–C

INSTRUCTIONS FOR EXHIBITS TO SUPPLEMENT S–1

1. The following exhibits must be filed with the Commission by the clearing organization(s) that will be clearing trades executed on the trading system of a foreign board of trade applying for registration with the Commission pursuant to CEA section 4(b) and part 48 of Commission's regulations. The information and documentation requested relates to the activities of the clearing organization.

2. The exhibits should be filed in accordance with the General Instructions to this Supplement S–1 and labeled as specified herein. If any exhibit is not applicable, please specify the exhibit letter and number and indicate by marking ''none'' or ''N/A.'' If any exhibit may be satisfied by documentation or information submitted in a different exhibit, the documentation or information need not be submitted more than once—please use internal cross-references where appropriate.

GENERAL REQUIREMENTS

A foreign board of trade applying for registration must submit sufficient information and documentation to successfully demonstrate to Commission staff that the foreign board of trade and its clearing organization satisfy all of the requirements of Commission regulation 48.7. With respect to its review of the foreign board of trade's clearing organization, the Commission anticipates that such information and documentation would necessarily include, but not be limited to, the following:

EXHIBIT A—GENERAL INFORMATION AND DOCUMENTATION

Attach, as **Exhibit A–1,** a description of the following for the clearing organization:

Location, history, size, ownership and corporate structure, governance and committee structure, and current or anticipated presence of staff in the United States.

Attach, as **Exhibit A–2,** the following:

Articles of association, constitution, or other similar organizational documents.

Attach, as **Exhibit A–3,** the following:

(1) Membership and participation agreements.

(2) Clearing agreements.

Attach, as **Exhibit A–4,** the following:

The national statutes, laws and regulations governing the activities of the clearing organization and its members.

Attach, as **Exhibit A–5,** the following:

The current rules, regulations, guidelines and bylaws of the clearing organization.

Attach, as **Exhibit A–6,** the following:

Evidence of the authorization, licensure or registration of the clearing organization pursuant to the regulatory regime in its home country jurisdiction(s) and a representation by its regulator(s) that it is in good regulatory standing in the capacity in which it is authorized, licensed or registered.

Attach, as **Exhibit A–7,** the following document:

A summary of any disciplinary or enforcement actions or proceedings that have been brought against the clearing organization, or any of the senior officers thereof, in the past five years and the resolution of those actions or proceedings.

Attach, as **Exhibit A–8,** the following document:

An undertaking by the chief executive officer(s) (or functional equivalent[s]) of the clearing organization to notify Commission staff promptly if any of the representations made in connection with this supplement cease to be true or correct, or become incomplete or misleading.

EXHIBIT B—MEMBERSHIP CRITERIA

Attach, as **Exhibit B,** the following, separately labeling each description:

(1) A description of the categories of membership and participation in the clearing organization and the access and clearing privileges provided to each by the clearing organization.

(2) A description of all requirements for each category of membership and participation and the manner in which members and other participants are required to demonstrate their compliance with these requirements. The description should include, but not be limited to, the following:

(i) Professional Qualification. A description of the specific professional requirements, qualifications, and/or competencies required of members or other participants and/or their staff and a description of the process by which the clearing organization confirms compliance with such requirements.

(ii) Authorization, Licensure and Registration. A description of any regulatory or self-regulatory authorization, licensure or registration requirements that the clearing organization imposes upon, or enforces against, its members and other participants including, but not limited to any authorization, licensure or registration requirements imposed by the regulatory regime/authority in the home country jurisdiction(s) of the clearing organization, and a description of the process by which the clearing organization confirms compliance with such requirements.

(iii) Financial Integrity. A description of the following:

(A) The financial resource requirements, standards, guides or thresholds required of members and other participants.

(B) The manner in which the clearing organization evaluates the financial resources/holdings of its members or other participants.

(C) The process by which applicants for clearing membership or participation demonstrate compliance with financial requirements including:

(*1*) Working capital and collateral requirements, and

(*2*) Risk management mechanisms.

(iv) Fit and Proper Standards. A description of any other ways in which the clearing organization ensures that potential members/other participants meet fit and proper standards.

EXHIBIT C—BOARD AND/OR COMMITTEE MEMBERSHIP

Attach, as **Exhibit C,** the following:

(1) A description of the requirements applicable to membership on the governing board and significant committees of the clearing organization.

(2) A description of how the clearing organization ensures that potential governing board and committee members meet these standards.

(3) A description of the clearing organization's provisions to minimize and resolve conflicts of interest with respect to membership on the governing board and significant committees of the clearing organization.

(4) A description of the clearing organization's rules with respect to the disclosure of material non-public information obtained as a result of a member's performance on the governing board or on a significant committee.

EXHIBIT D—SETTLEMENT AND CLEARING

Attach, as **Exhibit D–1,** the following:

A description of the clearing and settlement systems, including, but not limited to, the manner in which such systems interface with the foreign board of trade's trading system and its members and other participants.

Attach, as **Exhibit D–2,** the following:

A certification, signed by the chief executive offer (or functional equivalent) of the clearing organization, that the clearing system observes (1) the current Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, as updated, revised or otherwise amended, or (2) successor standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by the Committee on Payment and Settlement Systems or the International Organization of Securities Commissions (RCCPs).

Attach, as **Exhibit D–3,** the following:

A detailed description of the manner in which the clearing organization observes each of the RCCPs or successor standards and documentation supporting the representations made, including any relevant rules or written policies or procedures of the clearing organization. Each RCCP should be addressed separately within the exhibit.

EXHIBIT E—THE REGULATORY REGIME GOVERNING THE CLEARING ORGANIZATION IN ITS HOME COUNTRY OR COUNTRIES

With respect to each relevant regulatory regime or authority governing the clearing organization, attach, as **Exhibit E,** the following:

(1) A description of the regulatory regime/authority's structure, resources, staff and scope of authority.

(2) The regulatory regime/authority's authorizing statutes, including the source of its authority to supervise the clearing organization.

(3) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to: [11]

(i) The authorization, licensure or registration of the clearing organization.

(ii) The financial resource requirements applicable to the authorization, licensure or registration of the clearing organization and the continued operations thereof.

(iii) The regulatory regime/authority's program for the ongoing supervision and oversight of the clearing organization and the enforcement of its clearing rules.

(iv) The extent to which the current RCCPs are used or applied by the regulatory regime/authority in its supervision and oversight of the clearing organization or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the clearing systems for compliance therewith.

(v) The extent to which the regulatory regime/authority reviews and/or approves the rules of the clearing organization prior to their implementation.

(vi) The regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, sanction, and enforce rules applicable to the clearing organization.

(vii) The financial protection afforded customer funds.

EXHIBIT F—THE RULES OF THE CLEARING ORGANIZATION AND ENFORCEMENT THEREOF

Attach, as **Exhibit F–1,** the following:

A description of the clearing organization's regulatory or compliance department, including its size, experience level, competencies, duties and responsibilities of staff.

Attach, as **Exhibit F–2,** the following:

A description of the clearing organization's rules and how they are enforced, with reference to any rules provided as part of Exhibit A–5 that require the clearing organization to comply with one or more of the RCCPs.

Attach, as **Exhibit F–3,** the following, to the extent not included in Exhibit F–2:

A description of the clearing organization's disciplinary rules, including but not limited to rules that address the following—

(1) Disciplinary authority and procedures that empower staff to recommend and prosecute disciplinary actions for suspected rule violations and that provide the authority to fine, suspend, or expel any clearing participant pursuant to fair and clear standards.

(2) The issuance of warning letters and/or summary fines for specified rule violations.

(3) The review of investigation reports by a disciplinary panel or other authority for issuance of charges or instructions to investigate further, or findings that an insufficient basis exists to issue charges.

(4) Disciplinary committees of the clearing organization that take disciplinary action via formal disciplinary processes.

(5) Whether and how the clearing organization articulates its rationale for disciplinary decisions.

(6) The sanctions for particular violations and a discussion of the adequacy of sanctions with respect to the violations committed and their effectiveness as deterrents to future violations.

Attach, as **Exhibit F–4,** the following, to the extent not provided in Exhibit F–2:

A demonstration that the clearing organization is authorized by rule or contractual agreement to obtain, from members and other participants, any information and cooperation necessary to conduct investigations, to effectively enforce its rules, and to ensure compliance with the conditions of registration.

EXHIBIT G—INFORMATION SHARING AGREEMENTS AMONG THE COMMISSION, THE FOREIGN BOARD OF TRADE, THE CLEARING ORGANIZATION, AND RELEVANT REGULATORY AUTHORITIES

Attach, as **Exhibit G,** the following:

(1) A description of the arrangements among the Commission, the foreign board of trade, the clearing organization, and the relevant foreign regulatory authorities that govern the sharing of information regarding the transactions that will be executed pursuant to the foreign board of trade's registration with the Commission and the clearing and settlement of those transactions. This description should address or identify whether and how the foreign board of trade, clearing organization, and the regulatory authorities governing the activities of the foreign board of trade and clearing organization agree to provide directly to the Commission information and documentation requested by Commission staff that Commission staff determines is needed:

(i) To evaluate the continued eligibility of the foreign board of trade for registration.

(ii) To enforce compliance with the specified conditions of the registration.

(iii) To enable the CFTC to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or registered entities.

(iv) To respond to potential market abuse associated with trading by direct access on the registered foreign board of trade.

(v) To enable Commission staff to effectively accomplish its surveillance responsibilities with respect to a registered entity where Commission staff, in its discretion, determines that a contract traded on a registered foreign board of trade may affect such ability.

(2) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding. If not, describe any substitute information-sharing arrangements that are in place.

(3) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations. If not, a statement as to whether and how they have committed to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission, whether pursuant to an existing memorandum of understanding or some other arrangement.

EXHIBIT H—ADDITIONAL INFORMATION AND DOCUMENTATION

Attach, as **EXHIBIT H,** any additional information or documentation necessary to demonstrate that the requirements for registration applicable to the clearing

[11] To the extent that any such laws, rules, regulations or policies were provided as part of Exhibit A–4, they need not be duplicated. They may be cross-referenced.

organization or clearing system set forth in Commission regulation 48.7 are satisfied.

Issued in Washington, DC, December 5, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations

Appendices to Final Rule—Registration of Foreign Boards of Trade—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

In this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner noted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rule to implement a registration system for Foreign Boards of Trade (FBOTs) seeking to make futures and swaps contracts directly available to U.S. market participants. This registration system replaces the Commodity Futures Trading Commission's current practice of staff issuing no-action letters to FBOTs to permit them to provide such direct access for futures contracts. Importantly, the registration system will bring consistency, standardization and transparency—both for applicants and the public—to the process. In order to directly access U.S. market participants, the FBOTs and their clearing organizations must be subject to comparable and comprehensive supervision and regulation in their home countries and meet certain standards in the rule.

[FR Doc. 2011–31637 Filed 12–22–11; 8:45 am]

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