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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.

NATIONAL CAPITAL PLANNING COMMISSION

1 CFR Part 456

Freedom of Information Act Regulations

AGENCY: National Capital Planning Commission.

ACTION: Final rule.

SUMMARY: The National Capital Planning Commission (NCPC or Commission) revises the current rule the NCPC follows for processing requests for information under the Freedom of Information Act (FOIA). The revisions reorganize the rule to focus each section on a discrete topic. The revisions also incorporate new information in response to changes to the FOIA since NCPC's adoption of its current FOIA rule in 1982. Finally, the revisions decrease the cost charged for hard copies and increase the threshold dollar amount that must be reached before the NCPC charges members of the public a processing fee for information.

DATES: Effective March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Anne R. Schuyler, (202) 482–7223 or *FOIARequests@ncpc.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of Changes and Response to Comments

A. Summary of Changes

The two primary changes to the NCPS's current FOIA rule are a structural reorganization and the addition of five sections addressing new subject matter. The structural reorganization breaks up larger sections of the current rule which address multiple, related topics into individual, discrete sections addressing one individual topic per section. A second structural reorganization creates a Definition section (§ 456.3) consolidating all defined terms into one section and the defined terms are then capitalized throughout the document. These structural changes were done to make the rule more coherent and user friendly. The new rule also includes six new sections—Definitions (§ 456.3), Multi-track Processing (§ 456.8), Expedited Processing (§ 456.9), Consultations and Referrals (§ 456.10), Classified and Controlled Unclassified Information (§ 456.11), Confidential Commercial Information (§ 456.12), and FOIA Records Management § 456.16)—to address issues that have developed and/or been refined since the adoption of NCPC's current rules. The authority for the subject matter of the new sections is FOIA case law, other federal statutes, and Executive Orders. With the addition of the new sections in the rule, the NCPC's FOIA regulations provide a complete and current compendium of the rule governing the agency's FOIA activity. Requesters no longer need to consult multiple sources when preparing a FOIA Request for submission to the NCPC.

On August 19, 2013, the NCPC published a Notice of Proposed Rulemaking in the **Federal Register** (78 FR 50351) and requested comments during a 60-day period ending October 18, 2013. The NCPC considered all comments received in drafting the final rule.

B. Discussion and Response to Comments

Two Parties responded to the Notice of Proposed Rulemaking—a private individual and a subcomponent of a federal agency. Both parties offered specific recommendations they felt the NCPC should incorporate into the final rule.

The private individual offered three recommendations as follows: (1) Reduce duplication fees to reflect the decline in duplication costs over the years; (2) eliminate reference to central processing time as a component of fees as this is an outdated, technological term; and (3) include an express reference to a commitment to release portions of documents capable of segregation when part of the document is exempt from release. In response, the final rule establishes a 10 cents duplication fee for single and double sided copies contrary to the proposed 15 cents per page and 30 cents for double sided pages (See, § 456.14(a)(2)); eliminates the cost of operating a central processing unit as part of Search fees (See§ 456.14(a)(iii)); and include an express statement that NCPC shall release any portion of a withheld Record that reasonably can be segregated from the exempt portion of the record. (See, § 456.7(b)).

The subcomponent of a federal agency offered the following recommendations: (1) Add additional language clarifying the intersection between FOIA and the Privacy Act; (2) add three new defined terms as follows: FOIA Public Liaison, Requestor Category, and Fee Waiver; (3) use statutory language for the definition of Representative of the News Media and consider incorporating the term Freelance Journalist into the definition; (4) clarify that all Records subject to a FOIA Request must be reviewed regardless of what Requester Category the Requester falls into by removing the phrase Commercial Use Request from the definition of Review; (5) eliminate from the definition of Workday days when the federal government is closed for any reason because the FOIA statute only excludes Saturdays, Sundays and legal holidays, and DOJ directs federal agencies to count days for reporting purposes when federal agencies are closed due to weather conditions, furloughed employees, or other circumstances; (6) clarify the language of § 456.4 (General Policy) to indicate NCPC has administrative discretion to release documents without any charge or at a reduced rate, or to waive the agency's FOIA request requirements in the interest of public disclosure of information eligible for disclosure under the statute; (7) add a section indicating that the content of denial letters will include a brief description of the information being withheld and the exemption that provides for the deletion, provided this can be accomplished without revealing the deleted information or compromising the interest protected by the exemption; (8) include, in addition to the name of the agency to which a request has been referred, a description of the part of the request referred and the point of contact at the receiving agency; (9) advise requesters that the Office of Government Information Services (OGIS) provides mediation services to resolve disputes and include OGIS contact information; and (10) include information about the preservation of FOIA records and records management in the rules.

With one exception, the NCPC agreed to all recommended changes and incorporated them into the final rule. Thus, in corresponding order to the above recommendations, the NCPC: (1) Expanded the discussion of the distinction between a FOIA Request and a request made under the Privacy Act (See, § 456.1); (2) added new definitions for the terms FOIA Public Liaison, Fee Waiver, Representative of the News Media, and Requestor Category (See, § 456.3(l), (k), (t) and (v)); (3) included the statutory definition of Representative of the News Media but declined to reference a Freelance Journalist in the definition of Representative of the News Media since the definition of a Freelance Journalist states them to be part of this group (See, §§ 456.3(t) and (n)); (4) deleted the term Commercial Use Request from the definition of Review to render it clear all FOIA Requests are subject to Review (See, § 456.3(w)); (5) removed the reference to days when the federal government is closed for any reason from the definition of a Workday (See, § 456(3)(aa)); (6) acknowledged NCPC's administrative discretion to waive fees and request requirements (See, § 456.4(b)); (7) included a new section addressing the additional information to be contained in denial letters (See, § 456.7(b)); (8) added additional content requirements for referral letters (See, § 456.10(b)); (9) added information regarding OGIS's services and contact information (See, § 456.13(c)); and (10) added a new section addressing FOIA Records Management (See, § 456.16).

Finally, in response to an internal agency peer review, the requirements for a Fee Waiver were removed from the section on fees and relegated to a separate section. At the same time the previous language for a Fee Waiver contained in the Notice of Proposed Rulemaking was simplified to comply with the plain English mandate.

II. Compliance With Laws and Executive Orders

1. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

By Memorandum dated October 12, 1993 from Sally Katzen, Administrator, Office of Information and Regulatory Affairs (OIRA) to Heads of Executive Departments and Agencies and Independent Agencies, the Office of Management and Budget (OMB) rendered the NCPC exempt from the requirements of Executive Order 12866 (See, Appendix A of cited Memorandum). Nonetheless, the NCPC endeavors to adhere to the provisions of the Executive Order. Accordingly, the NCPC, in consultation with OIRA, has determined the rule is not a major rule for purposes of Executive Order 12866. Further, the NCPC developed the rule in a manner consistent with the requirements of Executive Order 13563.

2. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the NCPC certifies that the rule will not have a significant economic effect on a substantial number of small entities.

3. Small Business Regulatory Enforcement Fairness Act

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs for individuals, various levels of governments or various regions; and does not have a significant adverse effect on competition, employment, investment, productivity, innovation or the competitiveness of U.S. enterprises with foreign enterprises.

4. Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)

A statement required by the Unfunded Mandates Reform Act is not required. The rule neither imposes an unfunded mandate of more than $100 million per year nor imposes a significant or unique effect on state, local or tribal governments or the private sector.

5. Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The rule does not substantially and directly affect the relationship between the federal and state governments.

6. Civil Justice Reform (Executive Order 12988)

The General Counsel of the NCPC has determined that the rule does not unduly burden the judicial system and meets the requirements of Executive Order 12988 §§ 3(a) and 3(b)(2).

7. Paperwork Reduction Act

The rule does not contain information collection requirements, and it does not require a submission to the OMB under the Paperwork Reduction Act.

8. National Environmental Policy Act

The rule is of an administrative nature, and its adoption does not constitute a major federal action significantly affecting the quality of the human environment. The NCPC's adoption of the rule will have minimal or no effect on the environment; impose no significant change to existing environmental conditions; and will have no cumulative environmental impacts.

9. Clarity of the Regulation

Executive Order 12866, Executive Order 12988, and the Presidential Memorandum of June 1, 1998 requires the NCPC to write all rules in plain language. The NCPC maintains the rule meets this requirement, and there were no comments offered challenging this assertion.

List of Subjects in 1 CFR Part 456

Freedom of Information.

Dated: February 21, 2014.

Anne R. Schuyler,

General Counsel.

For the reasons stated in the preamble, the National Capital Planning Commission revises 1 CFR Part 456 to read as follows:

PART 456—NATIONAL CAPITAL PLANNING COMMISSION FREEDOM OF INFORMATION ACT

Sec.
456.1 General information.
456.2 Organization.
456.3 Definitions.
456.4 General policy.
456.5 Public reading rooms and information routinely available.
456.6 FOIA request requirements.
456.7 FOIA response requirements.
456.8 Multi-track processing.
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456.11 Classified and controlled unclassified information.
456.12 Confidential commercial information.
456.13 Appeals.
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456.15 Fee waiver requirements.
456.16 Preservation of FOIA records.

Authority: 40 U.S.C. 8701 et seq., as amended and 5 U.S.C. 552, as amended.

§ 456.1 General information.

This part contains the rules the National Capital Planning Commission (NCPC or Commission) shall follow in processing third party Requests for Records concerning the activities of the NCPC under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. Requests made by a U.S. citizen or an individual lawfully admitted for permanent residence to access his or her own records under the Privacy Act, 5 U.S.C. 522a are processed under this

part and in accordance with part 455 of Title 1 of the Code of Federal Regulations (CFR) to provide the greatest degree of access while safeguarding an individual's personal privacy. Information routinely provided to the public as part of regular NCPC activity shall be provided to the public without regard to this part.

§ 456.2 Organization.

(a) The NCPC serves as the planning agency for the federal government in the National Capital Region (NCR). The NCR includes the District of Columbia; Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudon, and Prince William Counties in Virginia; and all cities in Maryland and Virginia in the aforementioned counties.

(b) Pursuant to the Planning Act, 40 U.S.C. 8701 et seq., the NCPC's primary mission includes:

(1) Preparation of the ''Comprehensive Plan for the National Capital: Federal Elements'' (Comprehensive Plan). The Comprehensive Plan sets forth the principles, goals and planning policies that guide federal government growth and development of the NCR, and it serves as the foundation for all other plans prepared by the NCPC.

(2) Review of Federal and District of Columbia Agency Plans and Projects. The Commission reviews, and takes appropriate action on, federal and District government agency plans and projects to ensure compliance with, among others, the Comprehensive Plan, principals of good planning and urban design, and federal environmental and historic preservation policies mandated by the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).

(3) Preparation of the ''Federal Capital Improvement Program for the National Capital Region'' (FCIP). The FCIP is an annual, six year program of prioritized federal government capital projects prepared by the NCPC for the Office of Management and Budget (OMB).

(c) The Commission is comprised of five citizen members, three of whom are appointed by the President of the United States without Senate approval, including the Chairman, and two of whom are appointed by the Mayor of the District of Columbia. Ex-officio members of the Commission include:

(1) The Secretary of Defense;

(2) The Administrator of the General Services Administration;

(3) The Mayor of the District of Columbia;

(4) The Chairman of the Council of the District of Columbia;

(5) The Chairman of the Senate Committee of Homeland Security and Governmental Affairs; and

(6) The Chairman of the House Committee on Oversight and Government Reform or their designated alternates.

(d) A professional staff, headed by an Executive Director, assists the Commission and is organized as described on the NCPC Web site (www.ncpc.gov).

§ 456.3 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Act and FOIA* mean the Freedom of Information Act, 5 U.S.C. 552, as amended.

(b) *Adverse Determination or Determination* shall include a determination to withhold, in whole or in part, Records requested in a FOIA Request; the failure to respond to all aspects of a Request; the determination to deny a request for a Fee Waiver; or the determination to deny a request for expedited processing. The term shall also encompass a challenge to NCPC's determination that Records have not been described adequately, that there are no responsive Records, or that an adequate Search has been conducted.

(c) *Agency Record or Record* means any documentary material which is either created or obtained by a federal agency (Agency) in the transaction of Agency business and under Agency control. Agency Records may include without limitation books; papers; maps; charts; plats; plans; architectural drawings; photographs and microfilm; machine readable materials such as magnetic tape, computer disks and electronic data storage devices; electronic records including email messages; and audiovisual material such as still pictures, sound, and video recordings. This definition generally does not cover records of Agency staff that are created and maintained primarily for a staff member's convenience, exempt from Agency creation or retention requirements, and withheld from distribution to other Agency employees for their official use.

(d) *Confidential Commercial Information* means commercial or financial information obtained by the NCPC from a Submitter that may be protected from disclosure under Exemption 4 of the FOIA. Exemption 4 of the FOIA protects trade secrets and commercial or financial information obtained from a person which information is privileged or confidential.

(e) *Controlled Unclassified Information* means unclassified information that does not meet the standards for National Security Classification under Executive Order 13536, as amended, but is pertinent to the national interests of the United States or to the important interests of entities outside the federal government, and under law or policy requires protection from unauthorized disclosure, special handling safeguards, or prescribed limits on exchange or dissemination.

(f) *Commercial Use Request* means a FOIA Request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the Requester or the person on whose behalf the Request is made.

(g) *Direct Costs* means those expenditures that the NCPC incurs in searching for, duplicating, and reviewing documents to respond to a FOIA Request. Direct Costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplicating machinery. Direct Costs do not include overhead expenses such as costs of space, and heating or lighting the facility in which the Records are stored.

(h) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA Request in a form that is reasonably usable by a Requester. Copies can take the form of, among others, paper copy, audio-visual materials, or machine readable documents (i.e., computer disks or electronic data storage devices).

(i) *Educational Institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be classified in this category, a Requester must show that the Request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(j) *Expedited Processing* means giving a FOIA Request priority because a Requester has shown a compelling need for the Records.

(k) *Fee Waiver* means a waiver in whole or in part of fees if a Requester can demonstrate that certain statutory requirements are satisfied including that the information is in the public interest and is not requested for commercial purposes.

(l) *FOIA Public Liaison* means an NCPC official who is responsible for assisting in reducing delays, increasing transparency and understanding the status of Requests, and assisting in the resolution of disputes.

(m) *FOIA Request or Request* means a written Request made by an entity or member of the public for an Agency Record submitted via the U.S. Postal Service mail or other delivery means to include without limitation electronic-mail (email) or facsimile.

(n) *Freelance Journalist* means a Representative of the News Media who is able to demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by that news organization. A publication contract or past evidence of a specific freelance assignment from a news organization may indicate a solid basis for expecting publication.

(o) *Frequently Requested Documents* means documents that have been Requested at least three times under the FOIA. It also includes documents the NCPC anticipates would likely be the subject of multiple Requests.

(p) *Multi-track Processing* means placing simple Requests requiring relatively minimal work and/or review in one processing track, more complex Requests in one or more other tracks, and expedited Requests in a separate track. Requests in each track are processed on a first-in/first-out basis.

(q) *Noncommercial Scientific Institution* means an institution that is not operated for commerce, trade or profit, but is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a Requester must show that the Request is authorized by and is made under the auspices of a qualifying institution and that the Records are not sought for commercial use but are sought to further scientific research.

(r) *Privacy Act Request* means a written (paper copy with an original signature) request made by an individual for information about himself/herself that is contained in a Privacy Act system of records. The Privacy Act applies only to U.S. citizens and aliens lawfully admitted for permanent residence such that only individuals satisfying these criteria may make Privacy Act Requests.

(s) *Reading Room Materials* means Records, paper or electronic, that are required to be made available to the public under 5.U.S.C. 552(a)(2) as well as other Records that the NCPC, at its discretion, makes available to the public for inspection and copying without requiring the filing of a FOIA Request.

(t) *Representative of the News Media* means any person or entity that gathers information of potential interest to a segment of the population, uses his/her/its editorial skills to turn raw material into a distinct work, and distributes that work to an audience. News media entities include television or radio stations broadcasting to the public at large; publishers of periodicals that qualify as disseminators of news and make their products available for purchase or subscription by the general public; and alternative media to include electronic dissemination through telecommunication (internet) services. To be in this category, a Requester must not be seeking the Requested Records for a commercial use.

(u) *Requester* means an entity or member of the public submitting a FOIA Request.

(v) *Requester Category* means one of the five categories NCPC places Requesters in for the purpose of determining whether the Requester will be charged for Search, Review and Duplication, and includes Commercial Use Requests, Educational Institutions, Noncommercial Scientific Institutions, Representatives of the News Media, and all other Requesters.

(w) *Review* means the examination of Records to determine whether any portion of the located Record is eligible to be withheld. It also includes processing any Records for disclosure, i.e., doing all that is necessary to excise the record and otherwise prepare the Record for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(x) *Search* means the process of looking for material, by manual or electronic means that is responsive to a FOIA Request. The term also includes page-by-page or line-by-line identification of material within documents.

(y) *Submitter* means any person or entity outside the federal government from whom the NCPC directly or indirectly obtains commercial or financial information. The term includes, among others, corporations, banks, state and local governments, and agencies of foreign governments who provide information to the NCPC.

(z) *Unusual Circumstances* means, for purposes of § 456.7(c), and only to the extent reasonably necessary to the proper processing of a particular Request:

(1) The need to Search for and collect the Requested Agency Records from establishments that are separate from the Commission's offices;

(2) The need to Search for, collect and appropriately examine and Review a voluminous amount of separate and distinct Agency Records which are demanded in a single Request; or

(3) The need for consultation with another Agency having a substantial interest in the determination of the FOIA Request.

(aa) *Workday* means a regular Federal workday. It does not include Saturdays, Sundays, and legal public holidays.

§ 456.4 General policy.

(a) It is the NCPC's general policy to facilitate the broadest possible availability and dissemination of information to the public through use of the NCPC's Web site, *www.ncpc.gov*, and physical distribution of materials not available electronically. The NCPC staff shall be available to assist the public in obtaining information formally by using the procedures herein or informally in a manner not inconsistent with the rule set forth in this part. In addition, to the extent permitted by other laws, the NCPC will make available Agency Records of interest to the public that are appropriate for disclosure.

(b) The NCPC possesses the administrative discretion in the context of individual Requests to release documents for no or reduced fees or to waive any of the NCPC's FOIA Request requirements in the interest of public disclosure of information eligible for disclosure under the Act.

§ 456.5 Public reading rooms and information routinely available.

(a) The NCPC shall maintain an electronic library at *www.ncpc.gov* that makes Reading Room Materials capable of production in electronic form available for public inspection and downloading. The NCPC shall also maintain an actual public reading room containing Reading Room Materials incapable of production in electronic form at NCPC's offices. The actual reading room shall be available for use on Workdays during the hours of 9:00 a.m. to 4:00 p.m. Requests for appointments to review Reading Room Materials in the actual public reading room should be directed to the NCPC's Information Resources Specialist identified on the NCPC Web site (*www.ncpc.gov*).

(b) The following types of Records shall be available routinely (subject to the fee schedule set forth in § 456.14) without resort to formal FOIA Request procedures unless such Records fall

within one of the exemptions listed at 5 U.S.C. 552(b) of the Act:

(1) Commission agendas;

(2) Plans and supporting documentation submitted by applicants to the Commission to include environmental and historic preservation reports prepared for a plan or project;

(3) Executive Director's Recommendations;

(4) Commission Memoranda of Action;

(5) Transcripts of Commission proceedings;

(6) ''The Comprehensive Plan for the National Capital: Federal Elements'' and other plans prepared by the NCPC;

(7) ''Federal Capital Improvements Plan for the National Capital Region'' following release of the President's Budget;

(8) Policies adopted by the Commission;

(9) Correspondence between the Commission and the Congress, other federal and local government agencies, and the public; and

(10) Frequently Requested Documents.

§ 456.6 FOIA request requirements.

(a) The NCPC shall designate a Chief Freedom of Information Act Officer who shall be authorized to grant or deny any Request for a Record of the NCPC.

(b) Requests for a Record or Records that is/are not available in the actual or electronic reading rooms shall be directed to the Chief Freedom of Information Act Officer.

(c) All FOIA Requests shall be made in writing. If sent by U.S. mail, Requests should be sent to NCPC's official business address contained on the NCPC Web site. If sent via email, they should be directed to *www.ncpc.gov*. To expedite internal handling of FOIA Requests, the words Freedom of Information Act Request shall appear prominently on the transmittal envelope or the subject line of a Request sent via email or facsimile.

(d) The FOIA Request shall:

(1) State that the Request is made pursuant to the FOIA;

(2) Describe the Agency Record(s) Requested in sufficient detail including, without limitation, any specific information known such as date, title or name, author, recipient, or time frame for which you are seeking Records, to enable the NCPC personnel to locate the Requested Agency Records;

(3) State, pursuant to the fee schedule set forth in § 456.14, a willingness to pay all fees associated with the FOIA Request or the maximum fee the Requester is willing to pay to obtain the Requested Records, unless the Requester is seeking a Fee Waiver or placement in a certain Requester Category;

(4) State the desired form or format of disclosure of Agency Records with which the NCPC shall endeavor to comply unless compliance would damage or destroy an original Agency Record or reproduction is costly and/or requires the acquisition of new equipment; and

(5) Provide a phone number or email address at which the Requester can be reached to facilitate the handling of the Request.

(e) If a FOIA Request is unclear, overly broad, involves an extremely voluminous amount of Records or a burdensome Search, or fails to state a willingness to pay the requisite fees or the maximum fee which the Requester is willing to pay, the NCPC shall endeavor to contact the Requester to define the subject matter, identify and clarify the Records being sought, narrow the scope of the Request, and obtain assurances regarding payment of fees. The timeframe for a response set forth in § 456.7(a) shall be tolled (stopped temporarily) and the NCPC will not begin processing a Request until the NCPC obtains the information necessary to clarify the Request and/or clarifies issues pertaining to the fee.

§ 456.7 FOIA response requirements.

(a) The Freedom of Information Act Officer, upon receipt of a FOIA Request made in compliance with these rules, shall determine within 20 Workdays whether to grant or deny the Request. The Freedom of Information Officer shall within 20 Workdays notify the Requester in writing of his/her determination and the reasons therefore and of the right to appeal any Adverse Determination to the head of the NCPC.

(b) If a Request is denied in whole or in part, the Chief FOIA Officer's written determination shall include, if technically feasible, the precise amount of information withheld, a brief description of the information withheld without revealing its content, and the exemption under which it is being withheld unless revealing the exemption would harm an interested protected by the exemption. NCPC shall release any portion of a withheld Record that reasonably can be segregated from the exempt portion of the Record.

(c) In cases involving Unusual Circumstances, the Chief FOIA Officer may extend the 20 Workday time limit by written notice to the Requester. The written notice shall set forth the reasons for the extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension of more than 10 Working Days unless the Freedom of Information Act Officer affords the Requester an opportunity to modify his/her Request or arranges an alternative timeframe with the Requester for completion of the NCPC's processing.

§ 456.8 Multi-track processing.

The NCPC may use multiple tracks for processing FOIA Requests based on the complexity of Requests and those for which expedited processing is Requested. Complexity shall be determined based on the amount of work and/or time needed to process a Request and/or the number of pages of responsive Records. If the NCPC utilizes Multi-track Processing, it shall advise a Requester when a Request is placed in a slower track of the limits associated with a faster track and afford the Requester the opportunity to limit the scope of its Request to qualify for faster processing.

§ 456.9 Expedited processing.

(a) The NCPC shall provide Expedited Processing of a FOIA Request if the person making the Request demonstrates that the Request involves:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(3) The loss of substantial due process rights; or

(4) A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affect public confidence.

(b) A Request for Expedited Processing may be made at the time of the initial FOIA Request or at a later time.

(c) A Requester seeking Expedited Processing must submit a detailed statement setting forth the basis for the Expedited Processing Request. The Requester must certify in the statement that the need for Expedited Processing is true and correct to the best of his/her knowledge. To qualify for Expedited Processing, a Requester relying upon the category in paragraph (a)(2) of this section must establish:

(1) He/she is a full time Representative of the News Media or primarily engaged in the occupation of information dissemination, though it need not be his/her sole occupation;

(2) A particular urgency to inform the public about the information sought by the FOIA Request beyond the public's right to know about the government activity generally; and

(3) The information is of the type that has value that will be lost if not disseminated quickly such as a breaking news story. Information of historical interest only or information sought for litigation or commercial activities will not qualify nor would a news media deadline unrelated to breaking news.

(d) Within 10 calendar days of receipt of a Request for expedited processing, the NCPC shall decide whether to grant or deny the Request and notify the Requester of the decision in writing. If a Request for Expedited Processing is granted, the Request shall be given priority and shall be processed in the expedited processing track. If a Request for Expedited Processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 456.10 Consultations and referrals.

(a) Unless the NCPC determines that it is best able to process a Record in response to a FOIA Request, the NCPC shall either respond to the FOIA Request after consultation with the Agency best able to determine if the Requested Record(s) is/are subject to disclosure; or refer the responsibility for responding to the FOIA Request to the Agency responsible for originating the Record(s). Generally, the Agency originating a Record will be presumed by the NCPC to be the Agency best qualified to render a decision regarding disclosure or exemption except for Agency Records submitted to the NCPC pursuant to its authority to review Agency plans and/or projects.

(b) Upon referral of a FOIA Request to another Agency, the NCPC shall notify the Requester in writing of the referral, inform the Requester of the name of the Agency to which all or part of the FOIA Request has been referred, provide the Requester a description of the part of the Request referred, and advise the Requester of a point of contact within the receiving Agency.

(c) The timeframe for a response to a FOIA Request requiring consultation or referral shall be based on the date the FOIA Request was initially received by the NCPC and not any later date.

§ 456.11 Classified and controlled unclassified information.

(a) For Requests for an Agency Record that has been classified or may be appropriate for classification by another Agency pursuant to an Executive Order concerning the classification of Records, the NCPC shall refer the responsibility for responding to the FOIA Request to the Agency that either classified the Record, should consider classifying the Record, or has primary interest in the Record, as appropriate.

(b) Whenever a Request is made for a Record that is designated Controlled Unclassified Information by another Agency, the NCPC shall refer the FOIA Request to the Agency that designated the Record as Controlled Unclassified Information. Decisions to disclose or withhold information designated as Controlled Unclassified Information shall be made based on the applicability of the statutory exemptions contained in the FOIA, not on a Controlled Unclassified Information marking or designation.

§ 456.12 Confidential commercial information.

(a) Confidential Commercial Information obtained by the NCPC from a Submitter shall be disclosed under the FOIA only in accordance with the requirements of this section.

(b) A Submitter of Confidential Commercial Information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4 of the FOIA. These designations will expire ten years after the date of the submission unless the Submitter requests, and provides justification for, a longer designation period.

(c) Notice shall be given to a Submitter of a FOIA Request for potential Confidential Commercial Information if:

(1) The requested information has been designated in good faith by the Submitter as Confidential Commercial Information eligible for protection from disclosure under Exemption 4 of the FOIA; or

(2) The NCPC has reason to believe the requested information is Confidential Commercial Information protected from disclosure under Exemption 4 of the FOIA.

(d) Subject to the requirements of paragraphs (c) and (g) of this section, the NCPC shall provide a Submitter with prompt written notice of a FOIA Request or administrative appeal that seeks the Submitter's Confidential Commercial Information. The notice shall give the Submitter an opportunity to object to disclosure of any specified portion of that Confidential Commercial Information pursuant to paragraph (e) of this section. The notice shall either describe the Confidential Commercial Information Requested or include copies of the Requested Records or portions thereof containing the Confidential Commercial Information. When notice to a large number of Submitters is required, NCPC may provide notification by posting or publishing the notice in a place reasonably likely to accomplish the intent of the notice requirement such as a newspaper, newsletter, the NCPC Web site, or the **Federal Register**.

(e) The NCPC shall allow a Submitter a reasonable time to respond to the notice described in paragraph (d) of this section and shall specify within the notice the time period for response. If a Submitter has any objection to disclosure, it shall submit a detailed written statement. The statement must specify all grounds for withholding any portion of the Confidential Commercial Information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the Confidential Commercial Information is a trade secret or commercial or financial information that is privileged or confidential. If the Submitter fails to respond to the notice within the specified time, the NCPC shall consider this failure to respond as no objection to disclosure of the Confidential Commercial Information on the part of the Submitter, and NCPC shall proceed to release the requested information. A statement provided by the Submitter that is not received by NCPC until after the NCPC's disclosure decision has been made shall not be considered by the NCPC. Information provided by a Submitter under this paragraph may itself be subject to disclosure under the FOIA.

(f) The NCPC shall consider a Submitter's objections and specific grounds for nondisclosure in deciding whether to disclose Confidential Commercial Information. Whenever the NCPC decides to disclose Confidential Commercial Information over the the objection of a Submitter, the NCPC shall give the Submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the Submitter's disclosure objections was not sustained;

(2) A description of the Confidential Commercial Information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(g) The notice requirements of paragraphs (c) and (d) of this section shall not apply if:

(1) The NCPC determines that the Confidential Commercial Information is exempt under FOIA;

(2) The Confidential Commercial Information has been published lawfully or has been officially made available to the public;

(3) The Confidential Commercial Information's disclosure is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (Predisclosure Notification Procedures for Confidential Commercial Information); or

(4) The designation made by the Submitter under paragraph (b) of this section appears obviously frivolous in which case the NCPC shall, within a reasonable time prior to a specified disclosure date, give the Submitter written notice of any final decision to disclose the Confidential Commercial Information.

(h) Whenever a Requester files a lawsuit seeking to compel the disclosure of Confidential Commercial Information, the NCPC shall promptly notify the Submitter.

(i) Whenever the NCPC provides a Submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the NCPC shall also notify the Requester. Whenever the NCPC notifies a Submitter of its intent to disclose Requested Information under paragraph (f) of this section, the NCPC shall also notify the Requester. Whenever a Submitter files a lawsuit seeking to prevent the disclosure of Confidential Commercial Information, the NCPC shall notify the Requester.

§ 456.13 Appeals.

(a) An appeal of an Adverse Determination shall be made in writing to the Chairman of the Commission (Chairman). An appeal may be submitted via U.S. mail or other type of manual delivery service or via email or facsimile within 30 Workdays of the date of a notice of an Adverse Determination. To facilitate handling of an appeal, the words Freedom of Information Act Appeal shall appear prominently on the transmittal envelope or the subject line of a Request sent via electronic-mail or facsimile.

(b) An appeal of an Adverse Determination shall include a detailed statement of the legal, factual or other basis for the Requester's objections to an Adverse Determination; a daytime phone number or email address where the Requester can be reached if the NCPC requires additional information or clarification regarding the appeal; copies of the initial Request and the NCPC's written response; and for an Adverse Determination of a Request for Expedited Processing or a Fee Waiver, a demonstration of compliance with the requirements of §§ 456.9(a) and (c) or 456.14(a) through (c) respectively.

(c) The Chairman shall respond to an appeal of an Adverse Determination in writing within 20 Workdays of receipt. If the Chairman grants the appeal, the Chairman shall notify the Requester, and the NCPC shall make available copies of the Requested Records promptly thereafter upon receipt of the appropriate fee determined in accordance with § 456.14. If the Chairman denies the appeal in whole or in part, the letter to the Requester shall state the reason(s) for the denial, including the FOIA exemptions(s) applied; a statement that the decision is final; and notification of the Requester's right to seek judicial review of the denial in the District Court of the United States in either the locale in which the Requester resides, the locale in which the Requester has his/her principal place of business, or in the District of Columbia. The Chairman's letter of denial shall also advise the Requester that the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between a Requester and the NCPC as a non-exclusive alternative to litigation. Contact information for OGIS can be obtained from the OGIS Web site at *ogis@nara.gov*.

(d) The NCPC shall not act on an appeal of an Adverse Determination if the underlying FOIA Request becomes the subject of FOIA litigation.

(e) A party seeking court review of an Adverse Determination must first appeal the decision under this section to NCPC.

§ 456.14 Fees.

(a) In responding to FOIA Requests, the NCPC shall charge the following fees unless a Fee Waiver has been granted under § 456.15.

(1) Search Fees shall be as follows:

(i) Search fees shall be charged for all Requests, subject to the limitations of paragraph (b) of this section. The NCPC may charge for time spent conducting a Search even if it fails to locate any responsive Records or if the NCPC withholds Records located based on a FOIA exemption.

(ii) For each quarter hour spent by personnel searching for Requested Records, including electronic searches that do not require new programming, the fees will be calculated based on the average hourly General Schedule (GS) base salary, plus the District of Columbia locality payment, plus 16 percent for benefits, of employees in the following three categories: Staff Assistant (assigned at the GS 9–11 grades); Professional Personnel (assigned at the GS 11–13 grades); and Managerial Staff (assigned at the 14–15 grades). For a Staff Assistant the quarter hour fee to Search for and retrieve a Requested Record shall be $9.00. If a Search and retrieval cannot be performed entirely by a Staff Assistant, and the identification of Records within the scope of a Request requires the use of Professional Personnel, the fee shall be $12.00 for each quarter hour of Search time spent by Professional Personnel. If the time of Managerial Personnel is required, the fee shall be $18.00 for each quarter hour of Search time spent by Managerial Personnel.

(iii) For a computer Search of Records, Requesters shall be charged the Direct Costs of creating a computer program, if necessary, and/or conducting the Search, although certain Requesters (as provided in paragraph (b)(1) of this section) will be charged no Search fee and certain other Requesters (as provided in paragraph (b)(3) of this section) will be entitled to the cost equivalent of two hours of manual Search time without charge. These Direct Costs for a computer Search shall include the cost that is directly attributable to a Search for responsive Records, and the costs of the operator's salary for the time attributable to the Search.

(2) Duplication fees shall be charged to all Requesters, subject to the limitations of paragraph (b) of this Section. For a paper photocopy of a Record (no more than one copy of which shall be supplied), the fee shall be 10 cents per page for single or double sided copies, 90 cents per page for 8½ by 11 inch color copies, and $1.50 per page for color copies up to 11 x 17 inches per page. For copies produced by computer, and placed on an electronic data saving device or provided as a printout, the NCPC shall charge the Direct Costs, including operator time, of producing the copy. For other forms of Duplication, the NCPC shall charge the Direct Costs of that Duplication.

(3) Review fees shall be charged to Requesters who make a Commercial Use Request. Review fees will be charged only for the NCPC initial Review of a Record to determine whether an exemption applies to a particular Record or portion thereof. No charge will be made for Review at the administrative appeal level for an exemption already applied. However, Records or portions thereof withheld under an exemption that is subsequently determined not applicable upon appeal may be reviewed again to determine whether any other exemption not previously considered applies. If the NCPC determines a different exemption

applies, the costs of that Review are chargeable. Review fees will be charged at the same rates as those charged for a Search under paragraph (a)(1)(ii) of this section.

(b) The following limitations on fees shall apply:

(1) No Search fee shall be charged for FOIA Requests made by Educational Institutions, Noncommercial Scientific Institutions, or Representatives of the News Media.

(2) No Search or Review fees shall be charged for a quarter-hour period unless more than half of that period is required for Search or Review.

(3) Except for Requesters of a Commercial Use Request, the NCPC shall provide without charge the first two hours of Search (or the cost equivalent) and the first 100 pages of Duplication (or the cost equivalent); and

(4) Except for Requesters of a Commercial Use Request, no fee shall be charged for a Request if the total fee calculated under this section equals $50.00 or less.

(5) The fee provisions of this section shall be cumulative. Requesters other than those making a Commercial Use Request shall not be charged a fee unless the total cost of a Search in excess of two hours plus the cost of Duplication in excess of 100 pages totals more than $50.00.

(c) If the NCPC determines or estimates fees in excess of $50.00, the NCPC shall notify the Requester of the actual or estimated amount of total fees, unless in its initial Request the Requester has indicated a willingness to pay fees as high as those determined or estimated. If only a portion of the fee can be estimated, the NCPC shall advise the Requester that the estimated fee constitutes only a portion of the total fee. If the NCPC notifies a Requester that actual or estimated fees amount to more than $50.00, the Request shall not be considered received for purposes of calculating the timeframe for a Response, and no further work shall be undertaken on the Request until the Requester agrees to pay the anticipated total fee. Any such agreement shall be memorialized in writing. A notice under this paragraph shall offer the Requester an opportunity to work with the NCPC to reformulate the Request to meet the Requester's needs at a lower cost.

(d) Apart from other provisions of this section, if the Requester asks for or the NCPC chooses as a matter of administrative discretion to provide a special service—such as certifying that Records are true copies or sending them by other than ordinary mail—the actual costs of special service shall be charged.

(e) The NCPC shall charge interest on any unpaid fee starting on the 31st day following the date of billing the Requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 (Interest and Penalty on Claims) and will accrue from the date of the billing until payment is received by the NCPC. The NCPC shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. No. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(f) Where the NCPC reasonably believes that one or more Requesters are acting in concert to subdivide a Request into a series of Requests to avoid fees, the NCPC may aggregate the Requests and charge accordingly. The NCPC shall presume that multiple Requests of this type made within a 30-day period have been made to avoid fees. Where Requests are separated by a time period in excess of 30 days, the NCPC shall aggregate the multiple Requests if a solid basis exists for determining aggregation is warranted under all circumstances involved.

(g) Advance payments shall be treated as follows:

(1) For Requests other than those described in paragraphs (g)(2) and (3) of this section, the NCPC shall not require an advance payment. An advance payment refers to a payment made before work on a Request is begun or continued after being stopped for any reason but does not extend to payment owed for work already completed but not sent to a Requester.

(2) If the NCPC determines or estimates a total fee under this section of more than $250.00, it shall require an advance payment of all or part of the anticipated fee before beginning to process a Request, unless the Requester provides satisfactory assurance of full payment or has a history of prompt payment.

(3) If a Requester previously failed to pay a properly charged FOIA fee to the NCPC within 30 days of the date of billing, the NCPC shall require the Requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the NCPC begins to process a new Request or continues processing a pending Request from that Requester.

(4) If the NCPC requires advance payment or payment due under paragraphs (g)(2) or (3) of this section, the Request shall not be considered received and no further work will be undertaken on the Request until the required payment is received.

(h) Where Records responsive to Requests are maintained for distribution by Agencies operating statutorily based fee schedule programs, the NCPC shall inform Requesters of the steps for obtaining Records from those sources so that they may do so most economically.

(i) All fees shall be paid by personal check, money order or bank draft drawn on a bank of the United States, made payable to the order of the Treasurer of the United States.

§ 456.15 Fee waiver requirements.

(a) Records responsive to a Request shall be furnished without charge or at a charge reduced below that established under § 456.14 if the Requester demonstrates to the NCPC, and the NCPC determines, based on all available information, that Disclosure of the Requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and disclosure of the information is not primarily in the commercial interest of the Requester.

(b) To determine if disclosure of the Requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, the Requester shall demonstrate, and NCPC shall consider, the following factors:

(1) Whether the subject of the Requested Records concerns the operations or activities of the government. The subject of the Requested Records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(2) Whether the disclosure is likely to contribute to an understanding of government operations or activities. The portions of the Requested Records eligible for disclosure must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, is not likely to contribute to an understanding of government operations and activities because this information is already known.

(3) Whether disclosure of the Requested information will contribute to public understanding. The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the Requester. A Requester's expertise in the subject area and ability and intention to effectively convey

information to the public shall be considered. It shall be presumed that a Representative of the News Media satisfies this consideration.

(4) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities. The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent, as compared to the level of public understanding existing prior to the disclosure. The NCPC shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is important enough to be made public.

(c) To determine whether disclosure of the information is not primarily in the commercial interest of the Requester, the Requester shall demonstrate, and NCPC shall consider, the following factors:

(1) Whether the Requester has a commercial interest that would be furthered by the Requested disclosure. The NCPC shall consider any commercial interest of the Requester (with reference to the definition of Commercial Use Request in § 456.3(f)), or of any person on whose behalf the Requester may be acting, that would be furthered by the Requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(2) Whether any identified commercial interest of the Requester is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the Requester. A Fee Waiver is justified where the public interest standard of paragraph (b) of this section is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The NCPC ordinarily shall presume that a Representative of the News Media satisfies the public interest standard, and the public interest will be the interest primarily served by disclosure to that Requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(d) Where only some of the Records to be released satisfy the requirements for a Fee Waiver, a Fee Waiver shall be granted for those Records.

(e) Requests for a Fee Waiver should address the factors listed in paragraphs (b) and (c) of this section, insofar as they apply to each Request. The NCPC shall exercise its discretion to consider the cost-effectiveness of its investment of administrative resources in this decision-making process in deciding to grant Fee Waivers.

§ 456.16 Preservation of FOIA records.

(a) The NCPC shall preserve all correspondence pertaining to FOIA Requests received and copies or Records provided until disposition or destruction is authorized by the NCPC's General Records schedule of the National Archives and Records Administration (NARA) or other NARA-approved Schedule.

(b) Materials that are responsive to a FOIA Request shall not be disposed of or destroyed while the Request or a related lawsuit is pending even if the Records would otherwise be authorized for disposition under the NCPC's General Records Schedule or NARA or other NARA-approved records schedule.

[FR Doc. 2014–04180 Filed 2–26–14; 8:45 am]

BILLING CODE 7520–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0695; Directorate Identifier 2011–NM–264–AD; Amendment 39–17726; AD 2014–01–03]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B airplanes modified by Supplemental Type Certificate SA7971SW. This AD was prompted by reports of smoke, a burning odor, and possible fire in the flight deck and cabin of the airplane, which was caused by brushes wearing beyond their limits in the air conditioning motor. This AD requires an inspection to determine if a certain air compressor motor is installed, an inspection to determine the age of a certain compressor hour meter since new or overhauled, and repetitive replacement of the brushes on affected air conditioning compressor motor units. As an option to the replacement, this AD allows pulling the air conditioning circuit breaker and adding a placard. We are issuing this AD to detect and correct worn brushes contacting the commutator, which could result in a fire under the cabin floor with no means to detect or extinguish the fire.

DATES: This AD is effective April 3, 2014.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0695; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gregory Thiele, Aerospace Engineer, Special Certification Office, ASW–190, FAA, 2601 Meacham Boulevard, Fort Worth, TX 76137; phone: (817) 222–5229; fax: (817) 222–5785; email: *gregory.thiele@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B airplanes modified by Supplemental Type Certificate SA7971SW (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/CE3676ED FD53938785256CC20058E501?OpenDocument&Highlight=sa7971sw*). The NPRM published in the **Federal Register** on August 16, 2013 (78 FR 49982). The NPRM was prompted by reports of smoke, a burning odor, and possible fire in the flight deck and cabin of the airplane, which was caused by brushes wearing beyond their limits in the air conditioning motor. The NPRM proposed to require an inspection to determine if a certain air compressor motor is installed, an inspection to determine the age of a certain compressor hour meter since new or overhauled, and repetitive replacement of the brushes on affected air conditioning compressor motor units. As an option to the replacement, the NPRM proposed to allow pulling the air

conditioning circuit breaker and adding a placard. We are issuing this AD to detect and correct worn brushes contacting the commutator, which could result in a fire under the cabin floor with no means to detect or extinguish the fire.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 49982, August 16, 2013) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 49982, August 16, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 49982, August 16, 2013).

Interim Action

We consider this AD interim action. The inspection reports required by this AD will enable us to obtain better insight into the nature, cause, and extent of the brush wear, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we might consider further rulemaking.

Costs of Compliance

We estimate that this AD affects 23 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection, drive motor assembly brush replacement; and parts return and report.	11 work-hours × $85 per hour = $935 per replacement cycle.	$252 per replacement cycle.	$1,187 per replacement cycle.	$27,301 per replacement cycle.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–01–03 Saab AB, Saab Aerosystems: Amendment 39–17726; Docket No. FAA–2013–0695; Directorate Identifier 2011–NM–264–AD.

(a) Effective Date

This AD is effective April 3, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B airplanes, certificated in any category, that have been modified as specified in Supplemental Type Certificate SA7971SW (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/CE3676EDFD53938785256CC20058E501?OpenDocument&Highlight=sa7971sw*).

(d) Subject

Air Transport Association (ATA) of America Code 21, Air Conditioning.

(e) Unsafe Condition

This AD was prompted by reports of smoke, a burning odor, and possible fire in the flight deck and cabin of the airplane, which were caused by brushes wearing beyond their limits in the air conditioning motor. We are issuing this AD to detect and correct worn brushes contacting the commutator, which could result in a fire under the cabin floor with no means to detect or extinguish the fire.

(f) Compliance

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

(g) Part Number (P/N) Inspection

Within 30 days or 10 flight hours after the effective date of this AD, whichever occurs first: Inspect the air conditioner (A/C) compressor motor to determine if P/N 1134104–1 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the A/C compressor motor can be conclusively determined from that review.

(h) Inspection of Compressor Hour Meter and Maintenance Records

If, during the inspection required by paragraph (g) of this AD, any A/C compressor motor is found having P/N 1134104–1: Within 30 days or 10 flight hours after the effective date of this AD, whichever occurs first, determine the hour reading on the A/C compressor hour meter as specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Inspect the number of hours on the A/C compressor hour meter.

(2) Check the airplane logbook for any entry for replacing the A/C compressor motor brushes with new brushes, or for replacing the compressor motor or compressor condenser module assembly (pallet) with a motor or assembly that has new brushes.

(i) If the logbook contains an entry for replacement of parts as specified in paragraph (h)(2) of this AD, determine the number of hours on the A/C compressor motor brushes by comparing the number of hours on the compressor motor since replacement and use this number in lieu of the number determined in paragraph (h)(1) of this AD.

(ii) If, through the logbook check, the number of hours on the A/C compressor motor brushes cannot be positively determined as specified in paragraph (h)(2) of this AD, use the number of hours on the A/C compressor hour meter determined in paragraph (h)(1) of this AD, or assume the brushes have over 500 hours time-in-service.

(i) Replacement

Except as provided by paragraph (k) of this AD: Using the hour reading on the A/C compressor hour meter determined in paragraph (h) of this AD, replace the A/C compressor motor brushes with new brushes at the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD. Thereafter, repeat the replacement of the A/C compressor motor brushes at intervals not to exceed 500 hours time-in-service on the A/C compressor motor. Do the replacement in accordance with the actions specified in paragraph (j) of this AD.

(1) Before or when the A/C compressor motor reaches a total of 500 hours time-in-service.

(2) Before further flight after the inspection required by paragraph (h) of this AD.

(j) Motor Brush Replacement Instructions

Do the actions specified in paragraphs (j)(1) through (j)(23) of this AD to replace the compressor motor brushes as required by paragraph (i) of this AD:

(1) New brushes may be installed by first level maintenance personnel only under the conditions listed in paragraphs (j)(1)(i) through (j)(1)(iv) of this AD. If these conditions are not met, deactivate the A/C in accordance with paragraph (k)(1) of this AD until the conditions listed in paragraphs (j)(1)(i) through (j)(1)(iv) of this AD are met, or the entire compressor motor is replaced.

(i) Motor was operating correctly prior to brush replacement.

(ii) The motor is tested to verify proper operation and does not show any defects that would require motor replacement.

(iii) Only approved vendor brushes are used (P/N 1251171).

(iv) Brushes are installed, seated, and tested in accordance with paragraphs (j)(2) through (j)(23) of this AD.

(2) Verify all electrical power is off to the system.

(3) Remove all access panels and exhaust ducts to gain access to the drive motor.

(4) Disconnect power leads from motor terminals (1/4–28). Tag the positive lead.

(5) Remove condenser support bracket to provide access to brush cover fasteners and remove motor cuff shroud.

(6) Loosen and unsnap brush cover assembly. Remove from the motor.

(7) Verify all power is off, and that all panels, shrouds, brackets, and fairings are removed.

(8) With a stiff wire hook or scribe, lift brush spring from holder and remove each worn brush set until all four sets are removed.

(9) Remove brush shunt wire terminal screw. Continue this step until all four screws are removed.

(10) With brushes removed and using shop air at 30–40 pounds per square inch gauge (psig) and nozzle, blow out as much carbon and/or copper dust as possible from the commutator, armature, and field windings. Purge from the commutator end of the motor.

(11) Install each new brush set by lifting brush springs, sliding brush into holder (with brush leading edge in direction of motor rotation) and lightly releasing the brush spring on the brush. (See Figure 1 to paragraph (m)(4)(vii) of this AD.) CAUTION: Do not allow brush spring to strike hard into place or damage to brush may result.

(12) Verify that the brush seats flat on the commutator and that no binding in the holder is present. Align brush spring in center of brush groove.

(13) Install terminal screw and lock washer on brush shunt lead and other leads and tighten. Repeat this step for other brush sets. Torque to 15–20 in.-lbs. CAUTION: Do not cross thread or over torque brush lead screws or thread damage may result.

(14) Seat new brushes in accordance with paragraph (j)(15) of this AD. All new brushes must be seated to assure proper motor operation and/or performance.

(15) Brush Seating Procedure: Cut a 7 inch long by 1.5 inch wide (±0.125 inch, both dimensions) strip of 400–500 grit sand paper and place, with rough side out, on commutator. Secure one end of the paper to the commutator with masking tape in a manner such that the taped end will lead in the direction of shaft rotation (counter-clockwise looking at fan end). The other end will remain loose and overlap the taped end. Raise each brush momentarily while rotating the shaft until the taped end passes under each brush. After the sand paper is properly located tight against the commutator and encompasses all brush surface areas, carefully rotate the armature, by hand, in the normal direction of rotation until a full seat is obtained on each new brush. Three or four rotations is usually adequate. Excessive seating is not advised. Brush life may be reduced.

(16) Remove sand paper and blow out all carbon dust from the commutator and brush area. CAUTION: Eye, nose, and throat protection must be worn during this procedure.

(17) Lay brush shunt leads in position carefully such as to prevent any shorting problems. Leads must be able to easily follow brush and spring movement as brush wear occurs.

(18) Replace brush cover and attach motor power cables, if required.

(19) Replace all bracketry and hardware removed to access motor.

(20) Assure that brackets are properly installed, cooling fan does not interfere with shroud, motor drive belt aligned/tensioned, and belt cover is installed.

(21) Test the motor to verify proper operation. Therefore, connect ground power source or verify aircraft power is on and turn system on.

(22) Run system for a minimum of 15 minutes to seat brushes and check motor operation.

(23) Turn system and aircraft power off. System is ready for use.

(k) Deactivation/Reactivation

(1) In lieu of replacing the A/C compressor motor brushes as required by paragraphs (i) and (j) of this AD, before further flight, deactivate the A/C by doing the actions specified in paragraph (k)(1)(i) or (k)(1)(ii) of this AD, as applicable.

(i) Single System: Pull the compressor control circuit breaker (cockpit right-hand 10VU panel, ''REAR AIR COND''); install a placard by the A/C selection switch (co-pilot's side panel) prohibiting use of the air conditioner; and document deactivation of the system in the airplane logbook referring to this AD as the reason for deactivation.

(ii) Dual System: Pull the compressor control circuit breakers (cockpit right-hand 10VU panel, ''REAR AIR COND,'' and cockpit left-hand 9VU panel, ''FWD AIR COND''); install a placard (or placards) by the A/C selection switches (co-pilot's side panel) prohibiting use of the air conditioners; and document deactivation of the system in the

airplane logbook referring to this AD as the reason for deactivation.

(2) If an operator chooses to deactivate the system and then later chooses to return the airplane to service: Before returning the A/C system to service and removing the placard(s), do the inspection specified in paragarph (g) of this AD, and, as applicable, the inspection specified in paragraph (h) of this AD, and the replacements specified in paragraph (i) of this AD at the times specified in paragraph (i) of this AD.

(l) Parts Installation Limitation

As of the effective date of this AD, no person may install an A/C compressor motor having P/N 1134104–1 on any airplane, unless the inspection specified in paragraph (h) of this AD has been done, and the replacements specified in paragraph (i) of this AD are done at the times specified in paragraph (i) of this AD.

(m) Reporting Requirement

Submit a report of the results of the determination of hours required by paragraph (h) of this AD to the Special Certification Office, ASW–190, FAA, Attn: Gregory Thiele, Aerospace Engineer, 2601 Meacham Boulevard, Fort Worth, TX 76137; or email to: *9-ASW-190-COS@faa.gov.* The report must include the information specified in paragraphs (m)(1) through (m)(4) of this AD.

(1) The model and serial number of the airplane.

(2) The elapsed amount of flight hours since the last brush/motor replacement, if known.

(3) The amount of hours on the hour meter of the A/C compressor motor.

(4) The amount of wear on the brushes (including overall length and total calculated wear), calculated as specified in paragraphs (m)(4)(i) through (m)(4)(ix) of this AD.

(i) Verify all electrical power is off to the system.

(ii) Remove all access panels and exhaust ducts to gain access to the drive motor.

(iii) Disconnect power leads from motor terminals (1/4–28). Tag positive lead.

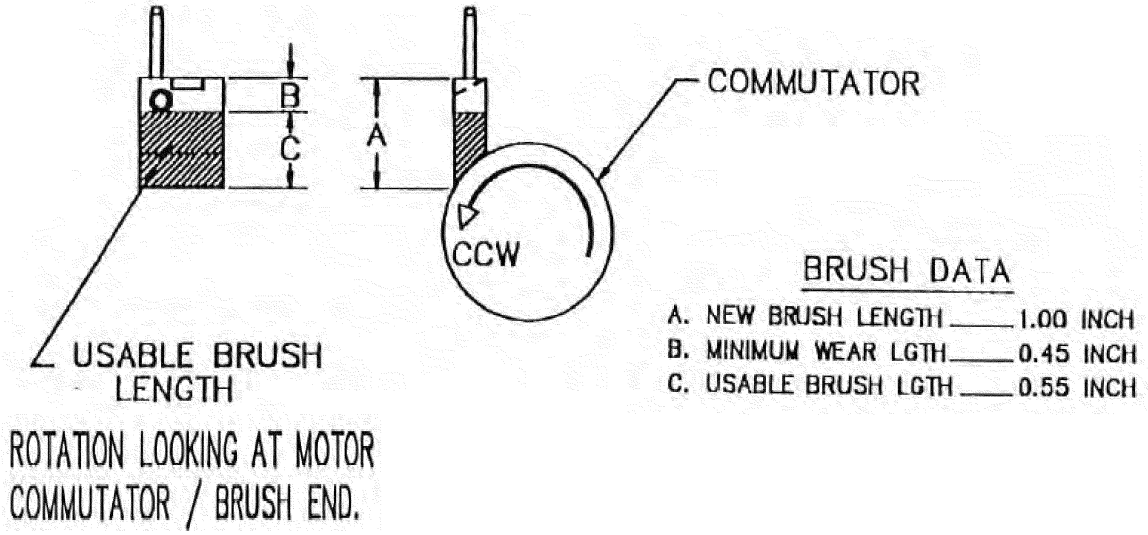
(iv) Remove condenser support bracket to provide access to brush cover fasteners and remove motor cuff shroud.

(v) Loosen and unsnap brush cover assembly. Remove from motor.

(vi) Lift brush spring and remove brush with wire hook or scribe.

(vii) Measure each brush as shown in figure below and record values.

Figure 1 to paragraph (m)(4)(vii) of this AD – Measuring the Brush



(viii) Using the brush with the shortest measured length, calculate the wear by subtracting the measured value from 1.000 inch.

(ix) Replace brushes in accordance with the instructions specified in paragraphs (j)(9) through (j)(23) of this AD.

(n) Compliance Time for Reporting

Submit the report required by paragraph (m) of this AD at the applicable time specified in paragraph (n)(1) or (n)(2) of this AD.

(1) If the determination of hours was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the determination of hours was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(o) Special Flight Permit

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to an appropriately rated repair station, provided that the A/C is deactivated as specified in paragraph (k)(1) of this AD on airplanes on which the A/C has been operated for 500 hours or more, and replacement brushes are not available.

(p) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Special Certification Office, ASW–190, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Special Certification Office, send it to the attention of the person identified in paragraph (q) of this AD.

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

(q) Related Information

For more information about this AD, contact Gregory Thiele, Aerospace Engineer, Special Certification Office, ASW–190, FAA, 2601 Meacham Boulevard, Fort Worth, TX 76137; phone: (817) 222–5229; fax: (817) 222–5785; email: *gregory.thiele@faa.gov.*

(r) Material Incorporated by Reference

None.

Issued in Renton, Washington, on January 7, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–03817 Filed 2–26–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 526, 529, and 558

[Docket No. FDA–2014–N–0002]

New Animal Drugs; Bambermycins; Clopidol; Ivermectin; Penicillin G Procaine and Dihydrostreptomycin Sulfate; Progesterone; Robenicoxib; Sulfadimethoxine; Change of Sponsor; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during December 2013. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to reflect a change of sponsorship of an NADA and a change to a sponsor's address.

DATES: This rule is effective February 27, 2014.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during December 2013, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the Center for Veterinary Medicine FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.*

In addition, West Agro, Inc., 11100 North Congress Ave., Kansas City, MO 64153 has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 055–028 for QUARTERMASTER (penicillin G procaine and dihydrostreptomycin sulfate) Dry Cow Treatment to HQ Specialty Pharma Corp., 120 Rte. 17 North, Suite 130, Paramus, NJ 07652. Following this change of sponsorship, West Agro, Inc., is no longer a sponsor of an approved NADA, and HQ Specialty Pharma Corp. is now the sponsor of an approved NADA. Also, Putney, Inc., 400 Congress St., Suite 200, Portland, ME 04101 has informed FDA of a change of address to One Monument Sq., Suite 400, Portland, ME 04101. Accordingly, the Agency is amending the regulations to reflect this change of sponsorship and change of sponsor's address.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING DECEMBER 2013

NADA/ ANADA	Sponsor	New animal drug product name	Action	21 CFR Section	FOIA summary	NEPA review
141–419	Huvepharma AD, 5th Floor, 3A Nikolay Haytov St., 1113 Sophia, Bulgaria.	COYDEN 25 (clopidol) plus FLAVOMYCIN (bambermycins) Type A medicated articles.	Original approval as an aid in prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati;* and for increased rate of weight gain and improved feed efficiency in broiler chickens.	558.95, 558.175	Yes	CE.[1 2]
200–523	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	SULFAMED (sulfadimethoxine) 40% Injectable Solution.	Original approval as a generic copy of NADA 041–245.	522.2220	Yes	CE.[1 3]
200–564	Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640.	Ivermectin Paste 1.87%	Original approval as a generic copy of NADA 134–314.	[4] N/A	Yes	CE.[1 3]
141–200	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	EAZI–BREED CIDR (progesterone intravaginal insert) Cattle Insert.	Supplemental approval for induction of estrous cycles in anestrous lactating dairy cattle.	529.1940	Yes	EA/FONSI.[5]
141–320	Novartis Animal Health US, Inc., 3200 Northline Ave., Suite 300, Greensboro, NC 27408.	ONSIOR (robenacoxib) Tablets.	Supplemental approval lowering age at treatment from 6 months to 4 months.	520.2075	Yes	CE.[1 6]

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING DECEMBER 2013—Continued

NADA/ ANADA	Sponsor	New animal drug product name	Action	21 CFR Section	FOIA summary	NEPA review
200–341	Sparhawk Laboratories, Inc., 12340 Santa Fe Trail Dr., Lenexa, KS 66215.	SPARMECTIN–E (ivermectin) Liquid.	Supplemental approval adding pathogens off exclusivity to labeling.	520.1195	Yes	CE.[1 3]

[1] The Agency has determined under § 25.33 (21 CFR 25.33) that this action is categorically excluded (CE) from the requirement to submit an environmental assessment (EA) or an environmental impact statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.
[2] CE granted under § 25.33(a)(2).
[3] CE granted under § 25.33(a)(1).
[4] 21 CFR 520.1192 already contains a drug labeler code entry for this sponsor.
[5] The Agency has carefully considered an EA of the potential environmental impact of this action and has made a finding of no significant impact (FONSI).
[6] CE granted under § 25.33(d)(1).

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 526, and 529

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 526, 529, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), alphabetically add an entry for ''HQ Specialty Pharma Corp.'', revise the entry for ''Putney, Inc.'', and remove the entry for ''West Agro, Inc.''; and in the table in paragraph (c)(2), revise the entry for ''026637'', remove the entry for ''033392'', and numerically add an entry for ''042791'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
HQ Specialty Pharma Corp., 120 Rte. 17 North, Suite 130, Paramus, NJ 07652 ..	042791
* * * * *	
Putney, Inc., One Monument Sq., Suite 400, Portland, ME 04101	026637
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
026637	Putney, Inc., One Monument Sq., Suite 400, Portland, ME 04101.
* * * * *	
042791	HQ Specialty Pharma Corp., 120 Rte. 17 North, Suite 130, Paramus, NJ 07652.
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. In § 520.1195, revise paragraphs (b)(1) and (b)(2) to read as follows:

§ 520.1195 Ivermectin liquid.

* * * * *

(b) * * *

(1) Nos. 000859, 050604, 054925, and 058005 for use of product described in paragraph (a)(1) of this section as in paragraphs (e)(1)(i), (e)(1)(ii)(A), and (e)(1)(iii) of this section.

(2) No. 058829 for use of product described in paragraph (a)(1) of this section as in paragraphs (e)(1)(i), (e)(1)(ii)(B), and (e)(1)(iii) of this section.

* * * * *

§ 520.2075 [Amended]

■ 5. In § 520.2075, in paragraph (c)(2), remove ''at least 6 months of age'' and in its place add ''at least 4 months of age''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 6. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 7. In § 522.2220, revise paragraphs (a)(1), (a)(2), and (a)(3)(iii) to read as follows:

§ 522.2220 Sulfadimethoxine.

(a)(1) *Specifications.* Each milliliter of solution contains 400 milligrams (mg) sulfadimethoxine.

(2) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter for conditions of use as in paragraph (a)(3) of this section:

(i) No. 054771 for use as in paragraph (a)(3) of this section.

(ii) Nos. 000859, 057561, and 061623 for conditions of use as in paragraph (a)(3)(iii) of this section.

(3) * * *

(iii) *Cattle*—(*a*) *Amount.* Administer an initial dose of 25 mg per pound of body weight by intravenous injection followed by 12.5 mg per pound of body weight every 24 hours until the animal is asymptomatic for 48 hours.

(*b*) *Indications for use.* For the treatment of bovine respiratory disease complex (shipping fever complex) and bacterial pneumonia associated with *Pasteurella* spp. sensitive to sulfadimethoxine; necrotic pododermatitis (foot rot) and calf diphtheria caused by *Fusobacterium necrophorum* sensitive to sulfadimethoxine.

(*c*) *Limitations.* Milk taken from animals during treatment and for 60 hours (5 milkings) after the latest treatment must not be used for food. Do not administer within 5 days of slaughter. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

* * * * *

PART 526—INTRAMAMMARY DOSAGE FORM NEW ANIMAL DRUGS

■ 8. The authority citation for 21 CFR part 526 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 526.1696c [Amended]

■ 9. In paragraph (b) of § 526.1696c, remove ''033392'' and in its place add ''042791''.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 10. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 11. In § 529.1940, in paragraphs (b) and (e)(1)(iii), remove ''000009'' and in its place add ''054771''; in paragraph (c), remove ''§ 556.540(a)'' and in its place add ''§ 556.540''; and add paragraph (e)(1)(ii)(D) to read as follows:

§ 529.1940 Progesterone intravaginal inserts.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(D) For induction of estrous cycles in anestrous lactating dairy cows.

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 12. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 13. In paragraph (d)(5) of § 558.95, redesignate paragraphs (d)(5)(iii) through (d)(5)(x) as paragraphs (d)(5)(iv) through (d)(5)(xi); and add new paragraph (d)(5)(iii) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(5) * * *

(iii) Clopidol as in § 558.175.

* * * * *

■ 14. In § 558.175:

■ a. Redesignate paragraph (d)(9) as paragraph (d)(11).

■ b. Redesignate paragraphs (d)(5) through (d)(8) as paragraphs (d)(6) through (d)(9).

■ c. Add new paragraphs (d)(5) and (d)(10).

The additions read as follows:

§ 558.175 Clopidol.

* * * * *

(d) * * *

Clopidol in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(5) 113.5	Bambermycins 1 to 2	Broiler chickens: As an aid in prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati;* and for increased rate of weight gain and improved feed efficiency	Feed continuously as the sole ration. Do not feed to chickens over 16 weeks of age	016592
*	*	*	*	*
(10) 227	Bambermycins 1 to 2	Broiler chickens: As an aid in prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati;* and for increased rate of weight gain and improved feed efficiency	Feed continuously as sole ration until 5 days before slaughter. Withdraw 5 days before slaughter or feed 113.5 g/ton clopidol and 1 to 2 g/ton bambermycins during those 5 days before slaughter. Do not feed to chickens over 16 weeks of age	016592
*	*	*	*	*

Dated: January 27, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–01959 Filed 2–26–14; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 524, 526, and 529

[Docket No. FDA–2014–N–0002]

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 54 approved new animal drug applications (NADAs) and 1 approved abbreviated new animal drug application (ANADA) for topical, intramammary, and certain other dosage form new animal drug products from Pfizer, Inc., including its several subsidiaries and divisions, to Zoetis, Inc.

DATES: This rule is effective February 27, 2014.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl.,

Rockville, MD 20855; 240–276–8300, *steven.vaughn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 E. 42d St., New York, NY 10017, and its wholly owned subsidiaries Alpharma, LLC; Fort Dodge Animal Health, Division of Wyeth; Fort Dodge Animal Health, Division of Wyeth Holdings Corp.; and its division, Pharmacia & Upjohn Co., have informed FDA that they have transferred ownership of, and all rights and interest in, the 54 approved NADAs and 1 approved ANADA in table 1 to Zoetis, Inc., 333 Portage St., Kalamazoo, MI 49007.

TABLE 1—NADAS AND ANADA TRANSFERRED FROM PFIZER, INC., TO ZOETIS, INC.

File No.	Product name
008–763	TERRAMYCIN (oxytetracycline hydrochloride) Ophthalmic Ointment with Polymyxin.
009–035	OPHTHAINE (proparacaine hydrochloride) Solution.
009–782	NOLVASAN (chlorhexidine acetate) Antiseptic Ointment.
009–809	NOLVASAN CAP–TABS (chlorhexidine acetate) Tablets.
010–434	NOLVASAN (chlorhexidine acetate) Suspension.
010–524	NEO–CORTEF with Tetracaine (neomycin sulfate, hydrocortisone acetate, tetracaine hydrochloride) Ointment.
011–703	NEO–DELTA CORTEF with Tetracaine (neomycin sulfate, prednisolone acetate, tetracaine hydrochloride) Ointment.
012–258	PANOLOG (triamcinolone acetonide, nystatin, thiostrepton, neomycin sulfate) Ointment.
012–991	KOPERTOX (copper naphthenate) Topical.
013–293	TERRA–CORTRIL (oxytetracycline hydrochloride and hydrocortisone) Topical Spray.
014–170	FLUOTHANE (halothane, USP).
015–433	NEO–PREDEF with Tetracaine (neomycin sulfate, isoflupredone acetate, tetracaine hydrochloride, and myristyl-gammapicolinium chloride) Ointment.
030–025	NEO–PREDEF with Tetracaine (neomycin sulfate, isoflupredone acetate, tetracaine hydrochloride) Topical Ointment.
032–168	DOMOSO (dimethyl sulfoxide) Solution.
032–319	TOPAZONE (furazolidone) Aerosol Powder.
034–872	NEO PREDEF (neomycin sulfate and isoflupredone acetate) Ointment.
037–586	ERYTHROMAST 36 (erythromycin) Intramammary Infusion.
038–801	ANAPRIME (flumethasone, polymyxin B sulfate, and neomycin sulfate) Ophthalmic Solution.
042–661	KANTRIM (kanamycin sulfate) Ophthalmic Ointment.
042–883	KANTRIM (kanamycin sulfate) Ophthalmic Solution.
043–784	KANFOSONE (kanamycin sulfate, calcium amphomycin, and hydrocortisone acetate) Ointment.
045–512	SYNOTIC(fluocinolone acetonide and dimethyl sulfoxide) Otic Solution.
047–334	SYNSAC (fluocinolone acetonide and dimethyl sulfoxide) Topical Solution.
047–925	DOMOSO (dimethyl sulfoxide) Gel.
047–997	AMPHODERM (kanamycin sulfate, calcium amphomycin, and hydrocortisone acetate) Ointment.
049–725	ANAPRIME Opthakote (flumethasone, polymyxin B sulfate, and neomycin sulfate) Ophthalmic.
049–726	OPTIPRIME OPTHAKOTE (neomycin sulfate and polymixin B sulfate) Ophthalmic Solution.
055–072	ALBACILLIN (procaine penicillin G/novobiocin) Suspension for Intramammary Infusion.
055–095	TICILLIN (ticarcillin disodium) Powder for Intrauterine Infusion.
055–098	ALBADRY Plus (procaine penicillin G and novobiocin sodium) Suspension for Intramammary Infusion.
065–114	MYCITRACIN (bacitracin zinc, neomycin sulfate, and polymyxin B sulfate) Ophthalmic Ointment.
065–119	FORTE (neomycin sulfate, penicillin, polymyxin B, hydrocortisone) Topical Ointment.
065–122	TETRACYN (tetracycline hydrochloride) Ointment.
065–149	CHLOROMYCETIN (chloramphenicol) Ophthalmic Ointment.
091–534	NEO–DELTA CORTEF (prednisolone acetate and neomycin sulfate) Solution.
093–514	NEO–CORTEF (neomycin sulfate and hydrocortisone acetate) Ointment.
096–676	PANOLOG (triamcinolone acetonide, nystatin, thiostrepton, neomycin sulfate) Cream.
100–808	ALBAMAST (novobiocin sodium) Suspension for Intramammary Infusion.
102–511	BIODRY (novobiocin sodium) Suspension for Intramammary Infusion.
120–299	MITABAN (amitraz) Liquid Concentrate.
127–892	AMIGLYDE–V (amikacin sulfate) Intrauterine Infusion.
130–435	OXYMARINE (oxytetracycline hydrochloride) Fish Marker.
140–839	BACTODERM (mupirocin) Ointment.
140–844	TRAMISOL (levamisole) Pour-On Topical Solution.
140–879	DERMA 4 (nystatin, neomycin sulfate, thiostrepton, and triamcinolone acetonide) Ointment.
141–003	DERM–OTIC (nystatin, neomycin, thiostrepton, and triamcinolone acetonide) Ointment.
141–036	PIRSUE (pirlimycin hydrochloride) Intramammary Infusion.
141–082	DOXIROBE (doxycycline hyclate) Gel.
141–095	DECTOMAX (doramectin) Pour-on Solution.
141–152	REVOLUTION (selamectin) Topical Solution.
141–200	EAZI-Breed CIDR (progesterone) Cattle Insert.
141–238	SPECTRAMAST LC (ceftiofur hydrochloride) Sterile Suspension for Intramammary Infusion.
141–239	SPECTRAMAST DC (ceftiofur hydrochloride) Sterile Suspension for Intramammary Infusion.
141–302	EAZI–BREED CIDR (progesterone) Sheep Insert.
200–102	GENTAGLYDE (gentamicin sulfate) Solution.

Accordingly, the Agency is amending the regulations in 21 CFR parts 524, 526, and 529 to reflect these transfers of ownership. In addition, the regulations are being amended to make minor corrections and to reflect a current format. This is being done to increase the accuracy and readability of the regulations.

In addition, FDA has noticed that certain sections of part 526 contain entries describing conditions of use for new animal drug products for which no NADA is approved. These errors were

introduced by the Agency during the 1992 recodification of the regulations for certifiable antibiotics (57 FR 37318, August 18, 1992). That rule did not identify whether particular regulations were the subject of an approved NADA and consequently resulted in codification of certain conditions of use for which there is no approved NADA. At this time, the Agency is amending the regulations to remove these entries. This action is being taken to improve the accuracy of the regulations.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Parts 524, 526, and 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 524, 526, and 529 are amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 524.86, revise the section heading, and paragraphs (b) and (c)(3) to read as follows:

§ 524.86 Amitraz.

* * * * *

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 3. In § 524.154, revise the section heading, redesignate paragraphs (a) and (b) as paragraphs (b) and (c); add new paragraph (a); and revise paragraph (b), and the introductory text in paragraph (c) to read as follows:

§ 524.154 Bacitracin, neomycin, and polymyxin B ophthalmic ointment.

(a) *Specifications.* Each gram of ointment contains:

(1) 500 units of bacitracin, 3.5 milligrams of neomycin, and 10,000 units of polymyxin B sulfate; or

(2) 400 units of bacitracin zinc, 3.5 milligrams of neomycin, and 10,000 units of polymyxin B sulfate.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter as follows:

(1) No. 054771 for use of product described in paragraph (a)(1) as in paragraph (c) of this section.

(2) Nos. 000061 and 043264 for use of product described in paragraph (a)(2) as in paragraph (c) of this section.

(c) *Conditions of use in dogs and cats.* * * *

* * * * *

■ 4. In § 524.155, revise the section heading, redesignate paragraphs (a) and (b) as paragraphs (b) and (c); add new paragraph (a); and revise paragraph (b), and the introductory text in paragraph (c) to read as follows:

§ 524.155 Bacitracin, neomycin, polymyxin B, and hydrocortisone ophthalmic ointment.

(a) *Specifications.* Each gram of ointment contains 400 units of bacitracin zinc, 5 milligrams (mg) of neomycin sulfate (equivalent to 3.5 mg of neomycin sulfate), 10,000 units of polymyxin B sulfate, and10 mg of hydrocortisone.

(b) *Sponsors.* See Nos. 000061 and 043264 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats.* * * *

* * * * *

§ 524.390 [Amended]

■ 5. In § 524.390, revise paragraphs (b) and (c)(3) to read as follows:

§ 524.390 Chloramphenicol ophthalmic ointment.

* * * * *

(b) *Sponsors.* See Nos. 043264 and 054771 in § 510.600(c) of this chapter.

(c) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the use of this drug in food-producing animals.

§ 524.402 [Amended]

■ 6. In paragraph (b) of § 524.402, remove ''000856'' and in its place add ''054771''.

■ 7. In § 524.450, revise the section heading, and paragraphs (b) and (c)(3) to read as follows:

§ 524.450 Clotrimazole.

* * * * *

(b) *Sponsors.* See No. 000859 in § 510.600(c) of this chapter.

(c) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 524.463 [Amended]

■ 8. In paragraph (b) of § 524.463, remove ''000856, 017135, and 058829'' and in its place add ''017135, 054771, and 058829''.

■ 9. In § 524.575, revise paragraphs (c)(1) and (c)(3) to read as follows:

§ 524.575 Cyclosporine ophthalmic ointment.

* * * * *

(c) * * *

(1) *Amount.* Apply a ¼-inch strip of ointment directly on the cornea or into the conjunctival sac of the affected eye(s) every 12 hours.

* * * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 10. Revise § 524.660 to read as follows:

§ 524.660 Dimethyl sulfoxide.

(a) *Specifications*—(1) Each milliliter (mL) of solution contains 90 percent dimethyl sulfoxide and 10 percent water.

(2) Each milliliter (mL) of gel product contains 90 percent dimethyl sulfoxide.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses and dogs*—(1) *Amount*—(i) *Horses.* Apply topically two to three times daily in an amount not to exceed 100 mL per day. Total duration of therapy should not exceed 30 days.

(ii) *Dogs.* Apply topically three to four times daily in an amount not to exceed 20 mL per day. Total duration of therapy should not exceed 14 days.

(2) *Indications for use.* To reduce acute swelling due to trauma.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§§ 524.660a and 524.660b [Removed]

■ 11. Remove §§ 524.660a and 524.660b.

■ 12. In § 524.770, in paragraph (b), remove ''000069'' and in its place add ''054771''; and revise paragraph (e)(3) to read as follows:

§ 524.770 Doramectin.

* * * * *

(e) * * *

(3) *Limitations.* Do not slaughter cattle within 45 days of latest treatment. This product is not approved for use in female dairy cattle 20 months of age or older, including dry dairy cows. Use in these cattle may cause drug residues in milk and/or in calves born to these cows. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

■ 13. In § 524.802, revise the section heading and paragraph (c)(3) to read as follows:

§ 524.802 Enrofloxacin and silver sulfadiazine otic emulsion.

* * * * *

(c) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extralabel use of this drug in food-producing animals.

■ 14. In § 524.900, remove paragraph (a); redesignate paragraphs (b) through (f) as paragraphs (a) through (e); and revise newly redesignated (e) to read as follows:

§ 524.900 Famphur.

* * * * *

(e) *Conditions of use*—(1) *Amount.* Apply 1 ounce per 200 pounds body weight, not to exceed a total dosage of 4 ounces, from the shoulder to the tail head as a single treatment. Apply as soon as possible after heel fly activity ceases.

(2) *Indications for use in beef and nonlactating dairy cattle.* For control of cattle grubs and to reduce cattle lice infestations.

(3) *Limitations.* Do not slaughter within 35 days after treatment. Do not use on lactating dairy cows or dry dairy cows within 21 days of freshening, calves less than 3 months old, animals stressed from castration, overexcitement or dehorning, sick or convalescent animals. Animals may become dehydrated and under stress following shipment. Do not treat until they are in good condition. Brahman and Brahman crossbreeds are less tolerant of cholinesterase-inhibiting insecticides than other breeds. Do not treat Brahman bulls. Swine should be eliminated from area where runoff occurs.

■ 15. Revise § 524.920, to read as follows:

§ 524.920 Fenthion.

(a) *Specifications.* (1) The drug is a liquid containing:

(i) 3 percent of fenthion; or

(ii) 20 percent fenthion.

(2) The drug is a solution containing either 5.6 or 13.8 percent fenthion. Each concentration is available in 2 volumes which are contained in single-dose applicators.

(b) *Sponsor.* See sponsors in § 510.600(c) of this chapter:

(1) No. 000859 for use of product described in paragraph (a)(1)(i) as in paragraph (d)(1) of this section.

(2) No. 000859 for use of product described in paragraph (a)(1)(ii) as in paragraph (d)(2) of this section.

(3) No. 000859 for use of products described in paragraph (a)(2) as in paragraph (d)(3) of this section.

(c) *Related tolerances.* See 40 CFR 180.214.

(d) *Conditions of use*—(1) *Beef cattle and nonlactating dairy cattle*—(i) *Amount.* It is used at the rate of one-half fluid ounce per 100 pounds of body weight applied topically on the backline of the animal. Only one application per season should be made for grub control and this will also provide initial control of lice. A second application for lice control may be made if animals become reinfested, but no sooner than 35 days after the first treatment. Proper timing of treatment is important for grub control; cattle should be treated as soon as possible after heel-fly activity ceases.

(ii) *Indications for use.* For the control of grubs and lice in beef and nonlactating cattle.

(iii) *Limitations.* Do not use on animals simultaneously or within a few days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides, or chemicals. Cattle should not be slaughtered within 35 days following a single treatment. If a second application is made for lice control, cattle should not be slaughtered within 45 days of the second treatment. The drug must not be used within 28 days of freshening of dairy cattle. If freshening should occur within 28 days after treatment, do not use milk as human food for the balance of the 28-day interval. Do not treat lactating dairy cattle; calves less than 3 months old; or sick, convalescent, or stressed livestock. Do not treat cattle for 10 days before or after shipping, weaning, or dehorning or after exposure to contagious infectious diseases.

(2) *Beef cattle and dairy cattle not of breeding age*—(i) *Amount.* It is administered as a single, topical application placed on the backline of animals as follows: For animals weighing 150 to 300 pounds, apply 4 milliliters (mL); for animals weighing 301 to 600 pounds, apply 8 mL; for animals weighing 601 to 900 pounds, apply 12 mL; for animals weighing 901 to 1,200 pounds, apply 16 mL; and for animal weighing over 1,200 pounds, apply 20 mL. For most effective results, cattle should be treated as soon as possible after heel-fly activity ceases. A second application is required for animals heavily infested with lice or for those which become reinfested. A second application should be made no sooner than 35 days after the first treatment.

(ii) *Indications for use.* For control of cattle grubs and as an aid in controlling lice on beef cattle and on dairy cattle not of breeding age.

(iii) *Limitations.* Do not use on animals simultaneously or within a few days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides, or chemicals. Host-parasite reactions such as bloat, salivation, staggering and paralysis may sometimes occur when cattle are treated while the common cattle grub (*Hypoderma lineatum*) is in the gullet, or while the northern cattle grub (*H. bovis*) is in the area of the spinal cord. Cattle should be treated before these stages of grub development. Consult your veterinarian, extension livestock specialist, or extension entomologist regarding the timing of treatment. If it is impossible to determine the area from which the cattle came and/or exact stage of the grubs, it is recommended that the cattle receive only a maintenance ration of low-energy feed during the treatment period. This lessens the likelihood of severe bloat which may occur in cattle on full feed when the common grub is killed while in the gullet. Do not treat dairy cattle of breeding age; calves less than 3 months old; sick, convalescent, or severely stressed livestock. Do not treat cattle for 10 days before or after shipping, weaning, dehorning, or after exposure to contagious or infectious diseases. Do not slaughter within 45 days of treatment.

(3) *Dogs*—(i) *Amount.* Four to 8 milligrams per kilogram of body weight. Apply the contents of the proper size, single-dose tube directly to one spot on the dog's skin.

(ii) *Indications for use.* For flea control on dogs only.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 16. In § 524.960, in paragraph (b), remove ''000856'' and in its place add ''054771''; and revise the section heading and paragraph (c)(3) to read as follows:

§ 524.960 Flumethasone, neomycin, and polymyxin B ophthalmic solution.

* * * * *

(c) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 524.981 [Removed and Reserved]

■ 17. Remove and reserve § 524.981.

■ 18. In § 524.981a, revise the section heading, the introductory text in paragraph (c), and paragraphs (c)(1) and (c)(2) to read as follows:

§ 524.981a Fluocinolone cream.

* * * * *

(c) *Conditions of use in dogs*—(1) *Amount*—A small amount is applied to the affected area two or three times daily.

(2) *Indications for use.* For the relief of pruritis and inflammation associated

with certain superficial acute and chronic dermatoses. It is used in the treatment of allergic and acute moist dermatitis and for the relief of superficial inflammation caused by chemical burns and physical abrasions.

* * * * *

■ 19. In § 524.981b, revise the section heading, paragraph (a), the introductory text in paragraph (c), and paragraphs (c)(1) and (c)(2) to read as follows:

§ 524.981b Fluocinolone solution.

(a) *Specifications.* The drug contains 0.01 percent fluocinolone acetonide.

* * * * *

(c) *Conditions of use in dogs*—(1) *Amount*—A small amount of solution is applied to the affected area two or three times daily.

(2) *Indications for use*—(i) *Dogs.* For the relief of pruritis and inflammation associated with otitis externa and certain superficial acute and chronic dermatoses.

(ii) *Cats.* For the relief of pruritis and inflammation associated with acute otitis externa and certain superficial acute and chronic dermatoses.

* * * * *

■ 20. In § 524.981c, revise the section heading, the introductory text in paragraph (c), and paragraphs (c)(1) and (c)(2) to read as follows:

§ 524.981c Fluocinolone and neomycin cream.

* * * * *

(c) *Conditions of use in dogs*—(1) *Amount*—A small amount is applied to the affected area two or three times daily.

(2) *Indications for use*—(i) *Dogs.* For the relief of pruritis and inflammation associated with superficial acute and chronic dermatoses. It is used in the treatment of allergic and acute moist dermatitis and nonspecific dermatoses.

(ii) *Dogs and cats.* Used in the treatment of wound infections.

* * * * *

■ 21. Revise § 524.981d to read as follows:

§ 524.981d Fluocinolone and dimethyl sulfoxide solution.

(a) *Specifications.* Each milliliter of solution contains 0.01 percent fluocinolone acetonide and 20 percent dimethyl sulfoxide.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount*—Instill 1 to 2 milliliters into each anal sac following expression of anal sac contents.

(2) *Indications for use.* For the relief of impaction commonly present in apparently normal anal sacs, for the reversal of inflammatory changes associated with abnormal anal sacs, and to counteract the offensive odor of anal sac secretions.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 22. Revise § 524.981e to read as follows:

§ 524.981e Fluocinolone and dimethyl sulfoxide otic solution.

(a) *Specifications.* Each milliliter of solution contains 0.01 percent fluocinolone acetonide and 60 percent dimethyl sulfoxide.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount*—Instill 4 to 6 drops (0.2 milliliter) twice daily into the ear canal for a maximum period of 14 days. The total dosage used should not exceed 17 milliliters.

(2) *Indications for use.* For the relief of pruritis and inflammation associated with acute and chronic otitis.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 23. In § 524.1005, in paragraph (b)(1), remove ''053501'' and in its place add ''054771''; in paragraph (c)(3), remove the last sentence and in its place add ''Do not use in horses intended for human consumption.''; and revise the section heading to read as follows:

§ 524.1005 Furazolidone powder.

* * * * *

■ 24. In § 524.1044, revise the section heading to read as follows:

§ 524.1044 Gentamicin ophthalmic and topical dosage forms.

■ 25. In § 524.1044b, revise the section heading to read as follows:

§ 524.1044b Gentamicin and betamethasone otic solution.

* * * * *

■ 26. In § 524.1044c, revise the section heading to read as follows:

§ 524.1044c Gentamicin ophthalmic ointment.

* * * * *

■ 27. In § 524.1044d, revise the section heading and paragraph (c) to read as follows:

§ 524.1044d Gentamicin and betamethasone ointment.

* * * * *

(c) *Conditions of use in dogs*—(1) *Amount*—(i) *Otitis externa.* Instill 3 to 8 drops into the ear canal twice daily for 7 days.

(ii) *Infected superficial lesions.* Apply to cover the treatment area twice daily for 7 to 14 days.

(2) *Indications for use.* For the treatment of acute and chronic otitis externa and infected superficial lesions caused by bacteria sensitive to gentamicin.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 28. In § 524.1044e, revise the section heading and paragraph (c) to read as follows:

§ 524.1044e Gentamicin spray.

* * * * *

(c) *Conditions of use in cattle*—(1) *Amount.* Hold the sprayer upright 3 to 6 inches from the affected eye, with the opening directed towards the eye, and pump once. Treat once daily for up to 3 days.

(2) *Indications for use.* For the treatment of pinkeye in cattle (infectious bovine keratoconjunctivitis) caused by *Moraxella bovis.*

(3) *Limitations.* Conditions other than bacterial infections of the bovine eye and infectious keratoconjunctivitis caused by *Moraxella bovis* may produce similar signs. If conditions persists or increases, discontinue use and consult a veterinarian.

■ 29. In § 524.1044g, remove the second occurrence of paragraph (b)(3); and revise the section heading to read as follows:

§ 524.1044g Gentamicin, betamethasone, and clotrimazole ointment.

* * * * *

■ 30. In § 524.1044h, revise the section heading and add paragraph (c)(3) to read as follows:

§ 524.1044h Gentamicin, mometasone, and clotrimazole otic suspension.

* * * * *

(c) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 31. In § 524.1132, revise the section heading to read as follows:

§ 524.1132 Hydrocortisone, miconazole, and gentamicin otic suspension.

* * * * *

■ 32. Revise § 524.1200a to read as follows:

§ 524.1200a Kanamycin ophthalmic ointment.

(a) *Specifications.* Each gram of ointment contains 3.5 milligrams kanamycin activity as kanamycin sulfate.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Apply a thin film to the affected eye three or four times daily or more frequently if deemed advisable. Treatment should be continued for at least 48 hours after the eye appears normal.

(2) *Indications for use.* For the treatment of various eye infections (conjunctivitis, blepharitis, dacryocystitis, keratitis, and corneal ulcerations) due to bacteria sensitive to kanamycin. For prophylaxis in traumatic conditions, removal of foreign bodies, and intraocular surgery.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 33. Revise § 524.1200b to read as follows:

§ 524.1200b Kanamycin ophthalmic solution.

(a) *Specifications.* Each milliliter of solution contains 10 milligrams kanamycin activity as kanamycin sulfate.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Instill a few drops into the affected eye every 3 hours or more frequently if deemed advisable. Administer as frequently as possible for the first 48 hours, after which the frequency of applications may be decreased. Treatment should be continued for at least 48 hours after the eye appears normal.

(2) *Indications for use.* For the treatment of various eye infections (conjunctivitis, blepharitis, dacryocystitis, keratitis, and corneal ulcerations) due to bacteria sensitive to kanamycin. For prophylaxis in traumatic conditions, removal of foreign bodies, and intraocular surgery.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 34. Revise § 524.1204 to read as follows:

§ 524.1204 Kanamycin, amphomycin, and hydrocortisone ointment.

(a) *Specifications.* Each gram of ointment contains 5 milligrams kanamycin activity as kanamycin sulfate, 5 milligrams of amphomycin activity as the calcium salt, and 10 milligrams of hydrocortisone acetate.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Apply to the affected areas of the skin at least twice daily. In severe or widespread lesions it may be desirable to apply the ointment more than twice daily. After some improvement is observed, treatment can usually be reduced to once daily.

(2) *Indications for use.* For the treatment of acute otitis externa, furunculosis, folliculitis, pruritus, anal gland infections, erythema, decubital ulcers, superficial wounds, and superficial abscesses associated with bacterial infections caused by organisms susceptible to one or both antibiotics.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 35. In § 524.1240, revise paragraph (b) to read as follows:

§ 524.1240 Levamisole.

* * * * *

(b) *Sponsors.* See Nos. 000061 and 054771 in § 510.600(c) of this chapter.

* * * * *

■ 36. In § 524.1446, revise the section heading to read as follows:

§ 524.1446 Milbemycin otic solution.

* * * * *

§ 524.1465 [Amended]

■ 37. In paragraph (b) of § 524.1465, remove ''000069, 025463, 026637, and 051672'' and in its place add ''025463, 026637, 051672, and 054771''.

■ 38. In § 524.1484, revise the section heading to read as follows:

§ 524.1484 Neomycin ophthalmic and topical dosage forms.

* * * * *

■ 39. In § 524.1484b, revise the section heading and paragraphs (b) and (c) to read as follows:

§ 524.1484b Neomycin, isoflupredone, tetracaine, and myristyl-gamma-picolinium powder.

* * * * *

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses, dogs, and cats*—(1) *Amount.* Apply to affected areas as a dusting powder.

(2) *Indications for use.* For the treatment or as adjunctive therapy of certain ear and skin conditions caused by or associated with neomycin-susceptible organisms and/or allergy; as a superficial dressing applied to minor cuts, wounds, lacerations, abrasions, and for postsurgical application where reduction of pain and inflammatory response is deemed desirable; as a dusting powder following amputation of tails, claws, and dewclaws and following ear trimming, castrating, and such surgical procedures as ovariohysterectomies. For the treatment of acute otitis externa, acute moist dermatitis, and interdigital dermatitis in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 40. In § 524.1484c, revise the section heading and paragraphs (b) and (c) to read as follows:

§ 524.1484c Neomycin, isoflupredone, and tetracaine ointment.

* * * * *

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* In treatment of otitis externa and other inflammatory conditions of the external ear canal, a quantity of ointment sufficient to fill the external ear canal; may be applied one to three times daily. When used on the skin or mucous membranes, the affected area should be cleansed, and a small amount of the ointment applied and spread or rubbed in gently. The involved area may be treated one to three times a day and these daily applications continued in accordance with the clinical response.

(2) *Indications for use.* For the treatment of acute otitis externa in dogs and to a lesser degree, chronic otitis externa in dogs. It also is effective in treating anal gland infections and moist dermatitis in the dog and is a useful dressing for minor cuts, lacerations, abrasions, and post-surgical therapy in the horse, cat, and dog. It may also be used following amputation of dewclaws, tails and claws, following ear trimming and castrating operations.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 41. In § 524.1484d, revise the section heading and paragraphs (b) and (c) to read as follows:

§ 524.1484d Neomycin, hydrocortisone, and tetracaine otic ointment.

* * * * *

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Instill a quantity of ointment sufficient to fill the external ear canal; may be applied one to three times daily.

(2) *Indications for use.* For the treatment of ear canker and other inflammatory conditions of the external ear canal, acute otitis externa and, to a lesser degree, chronic otitis externa.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 42. In § 524.1484e, revise the section heading and paragraphs (b) and (c) to read as follows:

§ 524.1484e Neomycin and polymyxin B ophthalmic solution.

* * * * *

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Instill 1 to 2 drops per eye every 6 hours.

(2) *Indications for use.* For the treatment of bacterial infections associated with topical ophthalmological conditions such as corneal injuries, superficial keratitis, conjunctivitis, keratoconjunctivitis, and blepharitis.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 43. In § 524.1484f, revise the section heading and paragraphs (b) and (c) to read as follows:

§ 524.1484f Neomycin, prednisolone, and tetracaine otic suspension.

* * * * *

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Instill 2 to 6 drops in the external ear canal 2 or 3 times daily.

(2) *Indications for use.* For the treatment of acute otitis externa and, to a lesser degree, chronic otitis externa; as treatment or adjunctive therapy of certain ear conditions caused by or associated with neomycin-susceptible organisms and/or allergy.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 44. In § 524.1484g, revise the section heading and paragraph (c) to read as follows:

§ 524.1484g Neomycin, thiabendazole, and dexamethasone solution.

* * * * *

(c) *Conditions of use in dogs and cats*—(1) *Amount.* In treating dermatoses affecting areas other than the ear, the surface of the lesions should be well moistened (2 to 4 drops per square inch) twice daily. In treating otitis externa, instill 5 to 15 drops in the ear twice daily. Treat for up to 7 days.

(2) *Indications for use.* As an aid in the treatment of bacterial, mycotic, and inflammatory dermatoses and otitis externa.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 45. In § 524.1484h, revise the section heading and paragraphs (b) and (c) to read as follows:

§ 524.1484h Neomycin, penicillin, polymyxin B, and hydrocortisone suspension.

* * * * *

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Rub a small amount into the affected area 1 to 3 times a day. After definite improvement, apply once daily or every other day.

(2) *Indications for use.* For the treatment of summer eczema, atopic dermatitis, interdigital eczema, and otitis externa caused by bacteria susceptible to neomycin, penicillin, and polymyxin B.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 46. In § 524.1484i, revise the section heading and paragraphs (b) and (c) to read as follows:

§ 524.1484i Neomycin and hydrocortisone ointment.

* * * * *

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Apply 3 or 4 times daily into the conjunctival sac. With improvement, frequency may be reduced to 2 or 3 times daily. For treatment of ear canker and other inflammatory conditions of the external ear canal, fill external ear canal 1 to 3 times daily.

(2) *Indications for use.* For the treatment of infections, allergic and traumatic keratitis, conjunctivitis, acute otitis externa and, to a lesser degree, chronic otitis externa.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 47. Add § 524.1484j to read as follows:

§ 524.1484j Neomycin and prednisolone ophthalmic ointment.

(a) *Specifications.* Each gram of ointment contains prednisolone sodium phosphate equivalent to 2.5 milligrams prednisolone 21-phosphate and 5 milligrams neomycin sulfate equivalent to 3.5 milligrams neomycin base.

(b) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* A small quantity of the ointment should be expressed into the conjunctival sac 4 times a day (at intervals of 1 to 8 hours) for a few days until there is a favorable response, then the frequency of application may be reduced to twice daily as long as the condition remains under control. Treatment may require from a few days to several weeks.

(2) *Indications for use.* For use in superficial ocular inflammations or infections limited to the conjunctiva or the anterior segment of the eye, such as those associated with allergic reactions or gross irritants.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 48. Add § 524.1484k to read as follows:

§ 524.1484k Prednisolone and neomycin suspension.

(a) *Specifications.* Each milliliter of suspension contains 2.5 milligrams of prednisolone acetate and 5 milligrams of neomycin sulfate equivalent to 3.5 milligrams of neomycin base.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* For beginning treatment of acute ocular inflammations place 1 or 2 drops in the conjunctival sac 3 to 6 times during a 24 hour period. When improvement occurs, reduce the dosage to 1 drop 2 to 4 times daily. For otitis externa, place 2 to 6 drops in the external ear canal 2 or 3 times daily.

(2) *Indications for use.* For the treatment of treating infectious, allergic and traumatic keratitis and conjunctivitis, acute otitis externa, and chronic otitis externa.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 49. In § 524.1580, revise the section heading to read as follows:

§ 524.1580 Nitrofurazone topical dosage forms.

* * * * *

§ 524.1580a [Removed]

■ 50. Remove § 524.1580a.

§ 524.1580b [Amended]

■ 51. Redesignate § 524.1580b as § 524.1580a; and in newly designated paragraph (b)(1), remove ''000069,''.

§ 524.1580c [Amended]

■ 52. Redesignate § 524.1580c as § 524.1580b; in paragraph (b), remove ''Nos. 000069 and 054628'' and in its place add ''No. 054628''; and in paragraphs (c)(2) and (c)(3), remove footnote 1.

§ 524.1580d [Removed]

■ 53. Remove § 524.1580d.

§ 524.1580e [Amended]

■ 54. Redesignate § 524.1580e as § 524.1580c; in paragraph (c)(1) and (c)(2), remove footnote 1; and revise the section heading to read as follows:

§ 524.1580c Nitrofurazone and butacaine ointment.

* * * * *

■ 55. In § 524.1600a, revise the section heading, paragraphs (b) and (c)(3) to read as follows:

§ 524.1600a Nystatin, neomycin, thiostrepton, and triamcinolone ointment.

* * * * *

(b) *Sponsors.* For petrolatum base ointments see Nos. 000856, 025463, 054771, and 054925 in § 510.600(c) of this chapter. For vanishing cream base ointments see Nos. 025463, 054771, and 054925.

(c) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 56. In § 524.1600b, revise the section heading, and paragraph (c) to read as follows:

§ 524.1600a Nystatin, neomycin, thiostrepton, and triamcinolone ophthalmic ointment.

* * * * *

(c) *Conditions of use*—(1) *Dogs and cats*—(i) *Amount.* Apply 1 drop of ointment to the affected eye(s) 2 or 3 times daily. Treatment may be continued for up to 2 weeks if necessary.

(ii) *Indications for use.* For use as an anti-inflammatory, antipruritic, antifungal (*Candida albicans*), and antibacterial ointment for local therapy in keratitis and conjunctivitis.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cattle*—(i) *Amount.* Apply small line of ointment to the affected eye(s) once daily. Treatment may be continued for up to 2 weeks if necessary.

(ii) *Indications for use.* For infectious kerato-conjunctivitis (pinkeye).

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 57. In § 524.1662, revise the section heading to read as follows:

§ 524.1662 Oxytetracycline ophthalmic and topical dosage forms.

* * * * *

■ 58. In § 524.1662a, in paragraph (b), remove ''000069'' and in its place add ''054771''; and revise the section heading and paragraph (c) to read as follows:

§ 524.1662a Oxytetracycline and hydrocortisone spray.

* * * * *

(c) *Conditions of use in dogs and cats*—(1) *Amount.* A small quantity should be sprayed on the affected surface by holding the container about 6 inches from the area to be treated and pressing the nozzle for 1 or 2 seconds. Only sufficient spray to coat the skin thinly is necessary. The application of small amounts at frequent intervals will give best results. Before treating animals with long or matted hair, it may be necessary to clip the affected area or spread the hairs to allow the medication to contact the skin surface. Relief may be noted following the first or second treatment; however, treatment should not be discontinued too soon after the initial favorable response has been obtained.

(2) *Indications for use.* For the relief of discomfort and continued treatment of many allergic, infectious, and traumatic skin conditions; for the prevention of bacterial infections in superficial wounds, cuts, and abrasions, treatment of allergic dermatoses, including urticaria, eczemas, insect bites, and cutaneous drug reactions, infections associated with minor burns and wounds, and nonspecific pruritus.

(3) *Limitations.* Keep away from eyes or other mucous membranes; avoid inhaling; use with adequate ventilation; in case of deep or puncture wounds or serious burns, consult a veterinarian.

■ 59. In § 524.1662b, in paragraph (b), remove ''000069'' and in its place add ''054771''; and revise the section heading and paragraph (c) to read as follows:

§ 524.1662b Oxytetracycline and polymyxin B ophthalmic ointment.

* * * * *

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Administer topically to the eye two to four times daily.

(2) *Indications for use.* For the prophylaxis and local treatment of superficial ocular infections due to oxytetracycline- and polymyxin-sensitive organisms including ocular infections due to streptococci, rickettsiae, *E. coli,* and *A. aerogenes* (such as conjunctivitis, keratitis, pinkeye, corneal ulcer, and blepharitis in dogs, cats, cattle, sheep, and horses); ocular infections due to secondary bacterial complications associated with distemper in dogs; and ocular infections due to bacterial inflammatory conditions which may occur secondary to other infectious diseases in dogs, cats, cattle, sheep, and horses.

(3) *Limitations.* Allergic reactions may occasionally occur. Treatment should be discontinued if reactions are severe. If new infections due to nonsensitive bacteria or fungi appear during therapy, appropriate measures should be taken.

§§ 524.1881, 524.1881a, and 524.1881b [Removed]

■ 60. Remove §§ 524.1881, 524.1881a, and 524.1881b.

§ 524.1883 [Removed]

■ 61. Remove § 524.1883.

■ 62. In § 524.1982, in paragraph (b), remove ''053501'' and in its place add ''054771''; and revise the section heading and paragraph (c) to read as follows:

§ 524.1982 Proparacaine ophthalmic solution.

* * * * *

(c) *Conditions of use in dogs and cats*—(1) *Amount.* It is administered as follows:

(i) For removal of sutures: Instill one to two drops 2 or 3 minutes before removal of stitches.

(ii) For removal of foreign bodies from eye, ear, and nose: For ophthalmic use, instill three to five drops in the eye prior to examination; for otic use, instill five to ten drops in the ear; for nasal use, instill five to ten drops in each nostril every 3 minutes for three doses.

(iii) For tonometry: Instill one to two drops immediately before measurement.

(iv) As an aid in treatment of otitis: Instill two drops into the ear every 5 minutes for three doses.

(v) For minor surgery: Instill one or more drops as required.

(vi) For catheterization: Instill two to three drops with a blunt 20-gauge needle immediately before inserting catheter.

(2) *Indications for use.* For use as a topical ophthalmic anesthetic. It is used as an anesthetic in cauterization of corneal ulcers, removal of foreign bodies and sutures from the cornea, and measurement of intraocular pressure (tonometry) when glaucoma is suspected; as an aid in the removal of foreign bodies from the nose and ear canal; as an accessory in the examination and treatment of painful otitis, in minor surgery, and prior to catheterization.

(3) *Limitations.* Keep away from eyes or other mucous membranes; avoid inhaling; use with adequate ventilation; in case of deep or puncture wounds or serious burns, consult a veterinarian.

§ 524.2098 [Amended]

■ 63. In paragraph (b) of § 524.2098, remove ''000069'' and in its place add ''No. 054771''.

■ 64. Revise § 524.2350 to read as follows:

§ 524.2350 Tolnaftate cream.

(a) *Specifications.* The drug contains 1 percent tolnaftate in an anhydrous cream base.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Apply a small amount of the cream to

the affected areas once or twice a day for 2 to 4 weeks.

(2) *Indications for use.* For the treatment of ringworm lesions due to *Microsporum canis* and *Microsporum gypseum.*

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 65. Revise § 524.2620 to read as follows:

§ 524.2620 Liquid crystalline trypsin, Peru balsam, castor oil.

(a) *Specifications*—(1) Each gram of liquid or aerosol contains 0.12 milligram of crystalline trypsin, 87.0 milligrams of Peru balsam, and 788.0 milligrams of castor oil.

(2) Each gram of liquid or aerosol contains 0.1 milligram of crystalline trypsin, 72.5 milligrams of Peru balsam, and 800 milligrams of castor oil.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter for use as in paragraph (c) in this section:

(1) No. 051079 for use of product described in paragraph (a)(1).

(2) No. 017135 for use of product described in paragraph (a)(2).

(c) *Conditions of use*—(1) *Amount.* Apply directly to the wound site.

(2) *Indications for use.* As an aid in the treatment of external wounds and assists healing by facilitating the removal of necrotic tissue, exudate, and organic debris.

PART 526—INTRAMAMMARY DOSAGE FORM NEW ANIMAL DRUGS

■ 66. The authority citation for 21 CFR part 526 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 526.313 [Amended]

■ 67. In paragraph (b) of § 526.313, remove ''000009'' and in its place add ''054771''.

§ 526.464a [Amended]

■ 68. In § 526.464a, remove paragraph (d).

§ 526.464d [Removed]

■ 69. Remove § 526.464d.

§ 526.820 [Amended]

■ 70. In paragraph (b) of § 526.820, remove ''No. 061623'' and in its place add ''Nos. 054771 and 061623''.

■ 71. In § 526.1130, revise the section heading to read as set forth below:

§ 529.1130 Hetacillin infusion.

* * * * *

■ 72. In § 526.1590, in paragraphs (a)(2) and (b)(2), remove ''000009'' and in its place add ''054771''; and revise the section heading to read as follows:

§ 526.1590 Novobiocin infusion.

* * * * *

§ 526.1696d [Amended]

■ 73. In paragraph (b) of § 526.1696d, remove ''000009'' and in its place add ''054771''.

§ 526.1810 [Amended]

■ 74. In paragraph (b) of § 526.1810, remove ''000009'' and in its place add ''054771''.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 75. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 76. In § 529.40, remove paragraph (c); redesignate paragraph (d) as paragraph (c); and revise newly redesignated paragraph (c)(3) to read as follows:

§ 529.40 Albuterol.

* * * * *

(c) * * *

(3) Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 529.56 [Amended]

■ 77. In paragraph (b) of § 529.56, remove ''000856 and 000859'' and in its place add ''000859 and 054771''.

§ 529.400 [Amended]

■ 78. In § 529.400, revise the section heading; in paragraph (b), remove ''000856'' and in its place add ''054771''; and in paragraphs (c)(1), (c)(2), and (c)(3), remove the footnote.

■ 79. Add § 529.778 to read as follows:

§ 529.778 Doxycycline.

(a) *Specifications.* Doxycycline hyclate solution contains 8.5 percent doxycycline activity. A syringe of N-methyl-2-pyrrolidone and poly (DL-lactide) mixed with a syringe of doxycycline produces 0.5 milliliter of solution.

(b) *Sponsor.* See 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Apply subgingivally to periodontal pocket(s) of affected teeth.

(2) *Indications for use.* For treatment and control of periodontal disease.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 529.1044 [Amended]

■ 80. In § 529.1044, remove the word ''sulfate'' in the section heading.

■ 81. In § 529.1044a, revise the section heading and paragraph (b) to read as follows:

§ 529.1044a Gentamicin solution for infusion.

* * * * *

(b) *Sponsors.* See Nos. 000061, 000859, 054628, 054771, 057561, 058005, and 061623 in § 510.600(c) of this chapter.

* * * * *

■ 82. In § 529.1044b, revise the section heading and paragraph (c) to read as follows:

§ 529.1044b Gentamicin solution for dipping eggs.

* * * * *

(c) *Conditions of use in turkeys*—(1) *Amount.* The drug is added to clean water to provide a dip solution with a gentamicin concentration of 250 to 1,000 parts per million. A concentration of 500 parts per million is recommended. Clean eggs should be held submerged in the gentamicin solution under a vacuum of about 27.5 to 38 centimeters of mercury for 5 minutes followed by additional soaking in gentamicin solution for approximately 10 minutes at atmospheric pressure. Eggs can also be treated by warming them for 3 to 6 hours at approximately 100 °F then immediately submerging them in gentamicin solution maintained at about 40 °F, keeping the eggs submerged for 10 to 15 minutes.

(2) *Indications for use.* As an aid in the reduction or elimination of the following microorganisms from turkey-hatching eggs: *Arizona hinshawii* (*paracolon*), *Salmonella* Saintpaul, and *Mycoplasma meleagridis.*

(3) *Limitations.* For use in the dipping treatment of turkey-hatching eggs only. Eggs which have been dipped in the drug shall not be used for food.

■ 83. In § 529.1115, remove the footnote in paragraphs (c)(1), (c)(2), and (c)(3); and revise paragraphs (b) and (c)(3) to read as follows:

§ 529.1115 Halothane.

* * * * *

(b) *Sponsor.* See Nos. 012164 and 054771 in § 510.600(c) of this chapter.

(c) * * *

(3) *Limitations.* Not for use in animals intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 529.1660 [Amended]

■ 84. In § 529.1660, in paragraph (b)(1), remove ''046573'' and in its place add ''054771''; and in paragraph (b)(2), remove ''000069, 048164, and 059130''

and in its place add ''048164, 054771, and 061623''.

§ 529.1940 [Amended]

■ 85. In paragraph (b) of § 529.1940, remove ''000009'' and in its place add ''054771''.

■ 86. Revise § 529.2464 to read as follows:

§ 529.2464 Ticarcillin.

(a) *Specifications.* Each vial contains ticarcillin disodium powder equivalent to 6 grams of ticarcillin for reconstitution with 25 milliliters of sterile water for injection or sterile physiological saline.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer 6 grams daily by intrauterine infusion for 3 consecutive days during estrus.

(2) *Indications for use.* For the treatment of endometritis caused by beta-hemolytic streptococci.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 87. Revise § 529.2503 to read as follows:

§ 529.2503 Tricaine methanesulfonate.

(a) *Specifications.* The drug is ethyl-*m*-amino-benzoate methanesulfonate.

(b) *Sponsor.* See Nos. 050378 and 051212 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* It is used as follows:

(i) *Fish.* The drug is added to ambient water at a concentration of from 15 to 330 milligrams per liter depending upon the degree of anesthetization or sedation desired, the species and size of the fish, and the temperature and softness of the water. Preliminary tests of solutions must be made with small numbers of fish to determine the desired rates of sedation or anesthesia and the appropriate exposure times for the specific lots of fish under prevailing conditions.

(ii) *Amphibians and other aquatic coldblooded animals.* The drug is added to ambient water in concentrations of from 1:1000 to 1:20,000 depending upon species and stage of development.

(2) *Indications for use.* For the temporary immobilization of fish, amphibians, and other aquatic coldblooded animals (poikilotherms) as an aid in handling during manual spawning (fish stripping), weighing, measuring, marking, surgical operations, transport, photography, and research.

(3) *Limitations.* Do not use within 21 days of harvesting fish for food. Use in fish intended for food should be restricted to Ictaluridae, Salmonidae, Esocidae, and Percidae, and water temperature exceeding 10 °C (50 °F). In other fish and in coldblooded animals, the drug should be limited to hatchery or laboratory use.

Dated: January 27, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–01958 Filed 2–26–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

[Docket No. FDA–2014–N–0002]

Zoetis Inc., et al.; Withdrawal of Approval of New Animal Drug Applications for Combination Drug Medicated Feeds Containing an Arsenical Drug

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of withdrawal of approval.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the withdrawal approval of 69 new animal drug applications (NADAs) and 22 abbreviated new animal drug applications (ANADAs) for use of arsanilic acid, carbarsone, or roxarsone Type A medicated articles to manufacture combination drug Type B and Type C medicated feeds. This action is being taken at the sponsor's request because the products are no longer manufactured or marketed.

DATES: Withdrawal of approval is effective March 10, 2014.

FOR FURTHER INFORMATION CONTACT: John Bartkowiak, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079, *john.bartkowiak@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Recently, the Agency provided notice of the withdrawal of approval of NADAs for Type A medicated articles containing arsanilic acid, carbarsone, and roxarsone and revoked applicable regulations for their conditions of use to manufacture single-ingredient medicated feeds in 21 CFR part 558 *New Animal Drugs For Use in Animal Feeds* (78 FR 70062, November 22, 2013; 78 FR 69992, November 22, 2013; 78 FR 70566, November 26, 2013; 78 FR 70496, November 26, 2013).

Subsequently, the following six sponsors of NADAs and ANADAs permitting use of arsanilic acid, carbarsone, or roxarsone Type A medicated articles to manufacture combination drug Type B and Type C medicated feeds requested that FDA withdraw approval of their applications because these combination medicated feeds are no longer manufactured or marketed.

• Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007 has requested that FDA withdraw approval of the following 39 NADAs and 11 ANADAs:

NADA/ANADA	Ingredient new animal drugs
040–435	3–NITRO (roxarsone)/DECCOX (decoquinate).
041–178	Roxarsone/AMPROL Plus (amprolium and ethopabate)/LINCOMIX (lincomycin).
041–984	Roxarsone/ROFENAID (sulfadimethoxine/ormetoprim).
091–326	3–NITRO (roxarsone)/DECCOX (decoquinate)/ALBAC (bacitracin zinc).
092–522	Roxarsone/COBAN (monensin)/LINCOMIX (lincomycin).
095–546	Roxarsone/ROBENZ (robenidine).
102–485	3–NITRO (roxarsone)/AVATEC (lasalocid).
105–758	3–NITRO (roxarsone)/AMPROL HI–E (amprolium and ethopabate)/BACIFERM (bacitracin zinc).
112–661	3–NITRO (roxarsone)/AVATEC (lasalocid)/LINCOMIX (lincomycin).
112–687	3–NITRO (roxarsone)/AVATEC (lasalocid)/FLAVOMYCIN (bambermycins).
116–082	3–NITRO (roxarsone)/AVATEC (lasalocid)/BMD (bacitracin MD).
116–088	3–NITRO (roxarsone)/COBAN (monensin)/BMD (bacitracin MD).
123–154	3–NITRO (roxarsone)/BACIFERM (bacitracin zinc)/COBAN (monensin).
126–052	3–NITRO (roxarsone)/AVATEC (lasalocid)/BACIFERM (bacitracin zinc).
131–894	3–NITRO (roxarsone)/AVATEC (lasalocid)/bacitracin MD.
132–447	Roxarsone/BIO–COX (salinomycin).

NADA/ANADA	Ingredient new animal drugs
134–185	3–NITRO (roxarsone)/BIO–COX (salinomycin)/FLAVOMYCIN (bambermycins).
135–321	3–NITRO (roxarsone)/BIO–COX (salinomycin)/BMD (bacitracin MD).
137–536	3–NITRO (roxarsone)/BIO–COX/ALBAC (bacitracin zinc).
138–703	3–NITRO (roxarsone)/COBAN (monensin)/ALBAC (bacitracin zinc).
139–190	3–NITRO (roxarsone)/BIO–COX (salinomycin)/BACIFERM (bacitracin zinc).
140–581	3–NITRO (roxarsone)/BIO–COX (salinomycin)/LINCOMIX (lincomycin).
140–852	3–NITRO (roxarsone)/MONTEBAN/BMD (bacitracin MD).
140–867	3–NITRO (roxarsone)/BIO–COX (salinomycin)/AUREOMYCIN (chlortetracycline).
141–100	3–NITRO (roxarsone)/DECCOX (decoquinate)/BMD (bacitracin MD).
141–112	3–NITRO (roxarsone)/MAXIBAN (narasin and nicarbazin)/BMD (bacitracin MD).
141–121	3–NITRO (roxarsone)/BIO–COX (salinomycin)/BMD (bacitracin MD).
141–131	3–NITRO (roxarsone)/ZOAMIX (zoalene)/BMD (bacitracin MD).
141–135	3–NITRO (roxarsone)/BIO–COX (salinomycin).
141–138	3–NITRO (roxarsone)/COBAN (monensin)/BMD (bacitracin MD).
141–139	3–NITRO (roxarsone)/COBAN (monensin).
141–142	3–NITRO (roxarsone)/AMPROL (amprolium)/BMD (bacitracin MD).
141–155	3–NITRO (roxarsone)/ROBENZ (robenidine)/BMD (bacitracin MD).
141–157	3–NITRO (roxarsone)/STENOROL (halofuginone).
141–223	3–NITRO (roxarsone)/CLINACOX (diclazuril).
141–293	3–NITRO (roxarsone)/AVATEC (lasalocid).
200–206	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/DECCOX (decoquinate).
200–207	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/COYDEN 25 (clopidol).
200–208	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/AVATEC (lasalocid).
200–209	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/SACOX (salinomycin).
200–214	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/AMPROL HI–E (amprolium and ethopabate).
200–211	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/COBAN (monensin).
200–215	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/BIO–COX (salinomycin).
200–217	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/AMPROL HI–E (amprolium and ethopabate).
200–259	3–NITRO (roxarsone)/SACOX (salinomycin)/CHLORMAX (chlortetracycline).
200–260	3–NITRO (roxarsone)/BIO–COX (salinomycin)/CHLORMAX (chlortetracycline).
038–879	CARB–O–SEP (carbarsone)/ZOAMIX (zoalene).
039–646	CARB–O–GAIN (carbarsone)/BMD (bacitracin MD).
136–484	CARB–O–SEP (carbarsone)/BACIFERM (bacitracin zinc).
200–203	CARB–O–SEP (carbarsone)/ALBAC (bacitracin zinc).

• Huvepharma AD, 5th Floor, 3A Nikolay Haitov Str., 1113 Sofia, Bulgaria has requested that FDA withdraw approval of the following 16 NADAs and 8 ANADAs:

NADA/ANADA	Ingredient new animal drugs
013–461	3–NITRO (roxarsone)/AMPROL Plus (amprolium and ethopabate).
040–264	3–NITRO (roxarsone)/COYDEN 25 (clopidol).
041–541	3–NITRO (roxarsone)/COYDEN 25 (clopidol)/BMD (bacitracin MD).
044–016	Roxarsone/bacitracin Zinc/COYDEN 25 (clopidol).
049–179	Roxarsone/AMPROL HI–E (amprolium and ethopabate).
049–180	Roxarsone/AMPROL HI–E (amprolium and ethopabate)/BMD (bacitracin MD).
095–547	3–NITRO (roxarsone)/AMPROL HI–E (amprolium and ethopabate)/FLAVOMYCIN (bambermycins).
095–548	3–NITRO (roxarsone)/AMPROL (amprolium)/FLAVOMYCIN (bambermycins).
095–549	3–NITRO (roxarsone)/AMPROL (amprolium)/FLAVOMYCIN (bambermycins).
098–341	3–NITRO (roxarsone)/COBAN (monensin)/FLAVOMYCIN (bambermycins).
101–628	3–NITRO (roxarsone)/FLAVOMYCIN (bambermycins)/zoalene.
140–533	3–NITRO (roxarsone)/STENOROL (halofuginone)/BMD (bacitracin MD).
140–843	3–NITRO (roxarsone)/MONTEBAN (narasin)/FLAVOMYCIN (bambermycins).
141–190	3–NITRO (roxarsone)/CLINICOX (diclazuril)/BMD (bacitracin MD).
200–080	3–NITRO (roxarsone)/SACOX (salinomycin)/FLAVOMYCIN (bambermycins).
200–081	3–NITRO (roxarsone)/SACOX (salinomycin)/BMD (bacitracin MD).
200–086	3–NITRO (roxarsone)/SACOX (salinomycin)/ALBAC (bacitracin zinc).
200–090	3–NITRO (roxarsone)/SACOX (salinomycin)/LINCOMIX (lincomycin).
200–091	3–NITRO (roxarsone)/SACOX (salinomycin)/AUREOMYCIN (chlortetracycline).
200–094	3–NITRO (roxarsone)/SACOX (salinomycin)/STAFAC (virginiamycin).
200–097	3–NITRO (roxarsone)/SACOX (salinomycin).
200–143	3–NITRO (roxarsone)/SACOX (salinomycin)/BACIFERM (bacitracin zinc).
118–507	CARB–O–SEP (carbarsone)/AMPROL (amprolium).
130–661	CARB–O–SEP (carbarsone)/FLAVOMYCIN (bambermycins).

• Phibro Animal Health Corp., GlenPointe Centre East, 3d floor, 300 Frank W. Burr Blvd., suite 21, Teaneck, NJ 07666 has requested that FDA withdraw approval of the following seven NADAs and two ANADAs:

NADA/ANADA	Ingredient new animal drugs
107–997	Roxarsone/NICARB (nicarbazin)/LINCOMIX (lincomycin).
108–115	Roxarsone/NICARB (nicarbazin).
120–724	3–NITRO (roxarsone)/STAFAC (virginiamycin)/COBAN (monensin).
138–953	3–NITRO (roxarsone)/STAFAC (virginiamycin)/BIO–COX (salinomycin).
141–058	3–NITRO (roxarsone)/AVIAX (semduramycin)/BMD (bacitracin MD).
141–066	3–NITRO (roxarsone)/AVIAX (semduramycin).
141–226	Roxarsone/AVIAX (semduramycin)/STAFAC (virginiamycin).
200–170	3–NITRO (roxarsone)/NICARMIX 25 (nicarbazin)/LINCOMIX (lincomycin).
200–172	3–NITRO (roxarsone)/NICARMIX 25 (nicarbazin).

• Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285 has requested that FDA withdraw approval of the following four NADAs:

NADA	Ingredient new animal drugs
041–500	3–NITRO (roxarsone)/COBAN (monensin).
049–464	Roxarsone/monensin/bacitracin.
140–445	Roxarsone/MONTEBAN (narasin).
141–113	3–NITRO (roxarsone)/MAXIBAN (narasin and nicarbazin).

• Cross Vetpharm Group Ltd., Broomhill Road, Tallaght, Dublin 24, Ireland, has requested that FDA withdraw approval of the following three NADAs:

NADA	Ingredient new animal drugs
038–241	PRO–GEN (arsanilic acid)/ERYTHRO (erythromycin)/zoalene.
038–242	PRO–GEN (arsanilic acid)/ERYTHRO (erythromycin)/amprolium and ethopabate.
038–624	PRO–GEN (arsanilic acid)/ERYTHRO (erythromycin).

• Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144 has requested that FDA withdraw approval of the following ANADA:

ANADA	Ingredient new animal drugs
200–355	3–NITRO (roxarsone)/PENNCHLOR (chlortetracycline)/BIO–COX (salinomycin).

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with 21 CFR 514.116 *Notice of withdrawal of approval of application,* notice is given that approval of the NADAs and ANADAs listed in this document, and all supplements and amendments thereto, is hereby withdrawn, effective March 10, 2014.

Elsewhere in this issue of the **Federal Register,** FDA is amending the animal drug regulations to reflect the voluntary withdrawal of approval of these applications.

Dated: February 3, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–02616 Filed 2–26–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

[Docket No. FDA–2014–N–0002]

Zoetis Inc., et al.; Withdrawal of Approval of New Animal Drug Applications for Combination Drug Medicated Feeds Containing an Arsenical Drug

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the withdrawal of approval of 69 new animal drug applications (NADAs) and 22 abbreviated new animal drug applications (ANADAs) for use of arsanilic acid, carbarsone, or roxarsone Type A medicated articles to manufacture combination drug Type B and Type C medicated feeds. This action is being taken at the sponsor's request because the products are no longer manufactured or marketed. FDA is also amending the animal drug regulations to remove entries describing conditions of use for combination drug medicated feeds for which no NADA is approved. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective March 10, 2014.

FOR FURTHER INFORMATION CONTACT: John Bartkowiak, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079, *john.bartkowiak@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Recently, the Agency provided notice of the withdrawal of approval of NADAs for Type A medicated articles containing

arsanilic acid, carbarsone, and roxarsone and revoked applicable regulations for their conditions of use to manufacture single-ingredient medicated feeds in 21 CFR part 558 *New Animal Drugs For Use in Animal Feeds* (78 FR 70062, Nov. 22, 2013; 78 FR 69992, Nov. 22, 2013; 78 FR 70566, Nov. 26, 2013; 78 FR 70496, Nov. 26, 2013).

Subsequently, the following six sponsors of NADAs and ANADAs permitting use of arsanilic acid, carbarsone, or roxarsone Type A medicated articles to manufacture combination drug Type B and Type C medicated feeds requested that FDA withdraw approval of their applications because these combination medicated feeds are no longer manufactured or marketed.

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112–661	3–NITRO (roxarsone)/AVATEC (lasalocid)/LINCOMIX (lincomycin).
112–687	3–NITRO (roxarsone)/AVATEC (lasalocid)/FLAVOMYCIN (bambermycins).
116–082	3–NITRO (roxarsone)/AVATEC (lasalocid)/BMD (bacitracin MD).
116–088	3–NITRO (roxarsone)/COBAN (monensin)/BMD (bacitracin MD).
123–154	3–NITRO (roxarsone)/BACIFERM (bacitracin zinc)/COBAN (monensin).
126–052	3–NITRO (roxarsone)/AVATEC (lasalocid)/BACIFERM (bacitracin zinc).
131–894	3–NITRO (roxarsone)/AVATEC (lasalocid)/bacitracin MD.
132–447	Roxarsone/BIO–COX (salinomycin).
134–185	3–NITRO (roxarsone)/BIO–COX (salinomycin)/FLAVOMYCIN (bambermycins).
135–321	3–NITRO (roxarsone)/BIO–COX (salinomycin)/BMD (bacitracin MD).
137–536	3–NITRO (roxarsone)/BIO–COX/ALBAC (bacitracin zinc).
138–703	3–NITRO (roxarsone)/COBAN (monensin)/ALBAC (bacitracin zinc).
139–190	3–NITRO (roxarsone)/BIO–COX (salinomycin)/BACIFERM (bacitracin zinc).
140–581	3–NITRO (roxarsone)/BIO–COX (salinomycin)/LINCOMIX (lincomycin).
140–852	3–NITRO (roxarsone)/MONTEBAN/BMD (bacitracin MD).
140–867	3–NITRO (roxarsone)/BIO–COX (salinomycin)/AUREOMYCIN (chlortetracycline).
141–100	3–NITRO (roxarsone)/DECCOX (decoquinate)/BMD (bacitracin MD).
141–112	3–NITRO (roxarsone)/MAXIBAN (narasin and nicarbazin)/BMD (bacitracin MD).
141–121	3–NITRO (roxarsone)/BIO–COX (salinomycin)/BMD (bacitracin MD).
141–131	3–NITRO (roxarsone)/ZOAMIX (zoalene)/BMD (bacitracin MD).
141–135	3–NITRO (roxarsone)/BIO–COX (salinomycin).
141–138	3–NITRO (roxarsone)/COBAN (monensin)/BMD (bacitracin MD).
141–139	3–NITRO (roxarsone)/COBAN (monensin).
141–142	3–NITRO (roxarsone)/AMPROL (amprolium)/BMD (bacitracin MD).
141–155	3–NITRO (roxarsone)/ROBENZ (robenidine)/BMD (bacitracin MD).
141–157	3–NITRO (roxarsone)/STENOROL (halofuginone).
141–223	3–NITRO (roxarsone)/CLINACOX (diclazuril).
141–293	3–NITRO (roxarsone)/AVATEC (lasalocid).
200–206	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/DECCOX (decoquinate).
200–207	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/COYDEN 25 (clopidol).
200–208	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/AVATEC (lasalocid).
200–209	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/SACOX (salinomycin).
200–214	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/AMPROL HI–E (amprolium and ethopabate).
200–211	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/COBAN (monensin).
200–215	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/BIO–COX (salinomycin).
200–217	3–NITRO (roxarsone)/ALBAC (bacitracin zinc)/AMPROL HI–E (amprolium and ethopabate).
200–259	3–NITRO (roxarsone)/SACOX (salinomycin)/CHLORMAX (chlortetracycline).
200–260	3–NITRO (roxarsone)/BIO–COX (salinomycin)/CHLORMAX (chlortetracycline).
038–879	CARB–O–SEP (carbarsone)/ZOAMIX (zoalene).
039–646	CARB–O–GAIN (carbarsone)/BMD (bacitracin MD).
136–484	CARB–O–SEP (carbarsone)/BACIFERM (bacitracin zinc).
200–203	CARB–O–SEP (carbarsone)/ALBAC (bacitracin zinc).

• Huvepharma AD, 5th Floor, 3A Nikolay Haitov Str., 1113 Sofia, Bulgaria, has requested that FDA withdraw approval of the following 16 NADAs and 8 ANADAs:

NADA/ANADA	Ingredient new animal drugs
013–461	3–NITRO (roxarsone)/AMPROL Plus (amprolium and ethopabate).
040–264	3–NITRO (roxarsone)/COYDEN 25 (clopidol).
041–541	3–NITRO (roxarsone)/COYDEN 25 (clopidol)/BMD (bacitracin MD).
044–016	Roxarsone + bacitracin Zinc/COYDEN 25 (clopidol).

NADA/ANADA	Ingredient new animal drugs
049–179	Roxarsone/AMPROL HI–E (amprolium and ethopabate).
049–180	Roxarsone/AMPROL HI–E (amprolium and ethopabate)/BMD (bacitracin MD).
095–547	3–NITRO (roxarsone)/AMPROL HI–E (amprolium and ethopabate)/FLAVOMYCIN (bambermycins).
095–548	3–NITRO (roxarsone)/AMPROL (amprolium)/FLAVOMYCIN (bambermycins).
095–549	3–NITRO (roxarsone)/AMPROL (amprolium)/FLAVOMYCIN (bambermycins).
098–341	3–NITRO (roxarsone)/COBAN (monensin)/FLAVOMYCIN (bambermycins).
101–628	3–NITRO (roxarsone)/FLAVOMYCIN (bambermycins)/zoalene.
140–533	3–NITRO (roxarsone)/STENOROL (halofuginone)/BMD (bacitracin MD).
140–843	3–NITRO (roxarsone)/MONTEBAN (narasin)/FLAVOMYCIN (bambermycins).
141–190	3–NITRO (roxarsone)/LINICOX (diclazuril)/BMD (bacitracin MD).
200–080	3–NITRO (roxarsone)/SACOX (salinomycin)/FLAVOMYCIN (bambermycins).
200–081	3–NITRO (roxarsone)/SACOX (salinomycin)/BMD (bacitracin MD).
200–086	3–NITRO (roxarsone)/SACOX (salinomycin)/ALBAC (bacitracin zinc).
200–090	3–NITRO (roxarsone)/SACOX (salinomycin)/LINCOMIX (lincomycin).
200–091	3–NITRO (roxarsone)/SACOX (salinomycin)/AUREOMYCIN (chlortetracycline).
200–094	3–NITRO (roxarsone)/SACOX (salinomycin)/STAFAC (virginiamycin).
200–097	3–NITRO (roxarsone)/SACOX (salinomycin).
200–143	3–NITRO (roxarsone)/SACOX (salinomycin)/BACIFERM (bacitracin zinc).
118–507	CARB–O–SEP (carbarsone)/AMPROL (amprolium).
130–661	CARB–O–SEP (carbarsone)/FLAVOMYCIN (bambermycins).

• Phibro Animal Health Corp., GlenPointe Centre East, 3d floor, 300 Frank W. Burr Blvd., suite 21, Teaneck, NJ 07666 has requested that FDA withdraw approval of the following seven NADAs and two ANADAs:

NADA/ANADA	Ingredient new animal drugs
107–997	Roxarsone/NICARB (nicarbazin)/LINCOMIX (lincomycin).
108–115	Roxarsone/NICARB (nicarbazin).
120–724	3–NITRO (roxarsone)/STAFAC (virginiamycin)/COBAN (monensin).
138–953	3–NITRO (roxarsone)/STAFAC (virginiamycin)/BIO–COX (salinomycin).
141–058	3–NITRO (roxarsone)/AVIAX (semduramycin)/BMD (bacitracin MD).
141–066	3–NITRO (roxarsone)/AVIAX (semduramycin).
141–226	Roxarsone/AVIAX (semduramycin)/STAFAC (virginiamycin).
200–170	3–NITRO (roxarsone)/NICARMIX 25 (nicarbazin)/LINCOMIX (lincomycin).
200–172	3–NITRO (roxarsone)/NICARMIX 25 (nicarbazin).

• Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285 has requested that FDA withdraw approval of the following four NADAs:

NADA	Ingredient new animal drugs
041–500	3–NITRO (roxarsone)/COBAN (monensin).
049–464	Roxarsone/monensin/bacitracin.
140–445	Roxarsone/MONTEBAN (narasin).
141–113	3–NITRO (roxarsone)/MAXIBAN (narasin and nicarbazin).

• Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, has requested that FDA withdraw approval of the following three NADAs:

NADA	Ingredient new animal drugs
038–241	PRO–GEN (arsanilic acid)/ERYTHRO (erythromycin)/zoalene.
038–242	PRO–GEN (arsanilic acid)/ERYTHRO (erythromycin)/amprolium + ethopabate.
038–624	PRO–GEN (arsanilic acid)/ERYTHRO (erythromycin).

• Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144 has requested that FDA withdraw approval of the following ANADA:

NADA	Ingredient new animal drugs
200–355	3–NITRO (roxarsone)/PENNCHLOR (chlortetracycline)/BIO–COX (salinomycin).

Elsewhere in this issue of the **Federal Register,** FDA gave notice that approval of these NADAs and ANADAs, and all supplements and amendments thereto, is withdrawn, effective March 10, 2014. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these voluntary withdrawals of approval.

In addition, FDA has noticed that certain sections in part 558 contain entries describing conditions of use for combination drug medicated feeds for which no NADA is approved. These errors were introduced by the Agency during the 1976 recodification of certain food additive regulations (41 FR 10984, March 15, 1976). That rule did not identify whether particular regulations were the subject of an approved NADA and consequently resulted in codification of certain conditions of use for which there is no approved NADA. At this time, the Agency is amending the regulations to remove entries that describe conditions of use for combination drug medicated feeds for which no NADA is approved. This action is being taken to improve the accuracy of the regulations.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Parts 556

Animal drugs, Food.

21 CFR Parts 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 2. Revise § 556.60 to read as follows:

§ 556.60 Arsenic.

(a) [Reserved]

(b) *Tolerances.* The tolerances for total residue of combined arsenic (calculated as As) are:

(1) *Turkeys*—(i) *Muscle and eggs:* 0.5 parts per million (ppm).

(ii) *Other edible tissues:* 2 ppm.

(2) [Reserved]

(c) *Related conditions of use.* See § 558.369 of this chapter.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Amended]

■ 4. In § 558.4, in paragraph (d), in the ''Category II'' table:

■ a. Remove the entries for ''Arsanilate acid'', ''Carbarsone'', and ''Sulfaquinoxaline'';

■ b. Remove the row entries under ''Nitarsone'' for ''Sulfanitran'' and ''Roxarsone''.

■ c. Remove the four entries for ''Roxarsone'' and their respective following row entries; and

■ d. In the fourth entry for ''Sulfamethazine,'' remove its three following row entries for ''Aklomide'' and two following row entries for ''Roxarsone''.

■ 5. In § 558.55, revise paragraphs (d)(1) through (3) and add paragraph (d)(4) to read as follows:

§ 558.55 Amprolium.

* * * * *

(d) * * *

(1) *Cattle.* It is used as follows:

Amprolium in grams per ton	Indications for use	Limitations	Sponsor
(i) 113.5 to 11, 350; to provide 5 milligrams per kilogram of body weight per day.	Calves: As an aid in the prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii.*	Top-dress on or mix in the daily ration. Feed for 21 days when experience indicates that coccidiosis is likely to be a hazard, as the sole source of amprolium. Withdraw 24 hours before slaughter. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.	016592
(ii) 113.5 to 11, 350; to provide 10 milligrams per kilogram of body weight per day.	Calves: As an aid in the treatment of coccidiosis caused by *Eimeria bovis* and *E. zuernii.*	Top-dress on or mix in the daily ration. Feed for 5 days as the sole source of amprolium. Withdraw 24 hours before slaughter. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.	016592

(2) *Chickens.* It is used as follows:

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 36.3 to 113.5	.....	Replacement chickens: For development of active immunity to coccidiosis.	Feed continuously until onset of production as follows:	016592

Growing conditions	Up to 5 weeks of age	From 5 to 8 weeks of age	Over 8 weeks of age
	Amprolium in grams per ton	Amprolium in grams per ton	Amprolium in grams per ton
Severe exposure to coccidiosis	113.5 (0.0125%)	72.6–113.5 (0.008%–0.0125%)	36.3–113.5 (0.004%–0.0125%)
Moderate exposure to coccidiosis	72.6–113.5	54.5–113.5	36.3–113.5

Growing conditions	Up to 5 weeks of age	From 5 to 8 weeks of age	Over 8 weeks of age
	Amprolium in grams per ton	Amprolium in grams per ton	Amprolium in grams per ton
Slight exposure to coccidiosis	(0.008%–0.0125%) 36.3–113.5 (0.004%–0.0125%)	(0.006%–0.0125%) 36.3–113.5 (0.004%–0.0125%)	(0.004%–0.0125%) 36.3–113.5 (0.004%–0.0125%)

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(ii) 36.3 to 113.5	Bacitracin methylene disalicylate 4 to 50.	Replacement chickens: For development of active immunity to coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed according to subtable in item (i). Bacitracin methylene disalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(iii) 72.6 to 113.5		Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella* only.	Feed continuously as the sole ration; as sole source of amprolium.	016592
(iv) 72.6 to 113.5	Bambermycins 1 to 2.	Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella* only; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as the sole ration; as sole source of amprolium. Bambermycins as provided by No. 016592 in § 510.600(c) of this chapter.	016592
(v) 113.5		1. Laying chickens: For prevention of coccidiosis. 2. Laying chickens: For treatment of coccidiosis in moderate outbreaks.	Feed continuously as the sole ration; as the sole source of amprolium. Feed for 2 weeks.	016592
(vi) 113.5 to 227		1. Replacement chickens: For prevention of coccidiosis where immunity to coccidiosis is not desired. 2. Broiler chickens: For prevention of coccidiosis where immunity to coccidiosis is not desired.	Feed continuously from day-old until onset of production; as the sole source of amprolium. Feed continuously as the sole ration; as sole source of amprolium.	016592
(vii) 113.5 to 227	Bambermycins 1 to 2.	Broiler chickens: For prevention of coccidiosis where immunity to coccidiosis is not desired; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as the sole ration; as sole source of amprolium. Bambermycins as provided by No. 016592 in § 510.600(c) of this chapter.	016592
(viii) 227		Laying chickens: For treatment of coccidiosis in severe outbreaks..	Feed for 2 weeks	016592

(3) *Turkeys.* It is used as follows:

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 113.5	Bambermycins 1 to 4.	Growing turkeys: For prevention of coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as the sole source of amprolium; bambermycins as provided by No. 016592 in § 510.600(c) of this chapter.	016592
(ii) 113.5 to 227		Turkeys: For prevention of coccidiosis	Feed continuously as the sole ration; as sole source of amprolium.	016592

(4) *Pheasants.* It is used as follows:

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 159		Growing pheasants: For the prevention of coccidiosis caused by *Eimeria colchici, E. duodenalis,* and *E. phasiani.*	Feed continuously as sole ration. Use as sole source of amprolium.	016592
(ii) [Reserved]				

■ 6. In § 558.58, revise paragraph (e) to read as follows:

§ 558.58 Amprolium and ethopabate.

* * * * *

(e) *Conditions of use.* It is used in chicken feed as follows:

Amprolium and ethopabate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(1) Amprolium 113.5 and ethopabate 3.6.	.....	Broiler chickens: As an aid in the prevention of coccidiosis.	Feed continuously as sole ration; as sole source of amprolium. Not for laying chickens.	016592
(2) Amprolium 113.5 and ethopabate 3.6.	Lincomycin 2 to 4	Broiler chickens: As an aid in the prevention of coccidiosis; for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration; as sole source of amprolium. Not for laying chickens. Lincomycin as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(3) Amprolium 113.5 and ethopabate 36.3.	.....	Broiler chickens and replacement chickens: where immunity to coccidiosis is not desired: As an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur.	Feed continuously as sole ration; as sole source of amprolium. Not for chickens over 16 weeks of age.	016592
(4) Amprolium 113.5 and ethopabate 36.3.	Bacitracin 4 to 50	1. Broiler chickens and replacement chickens: where immunity to coccidiosis is not desired; to aid in prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur; for increased rate of weight gain in broiler chickens raised in floor pens.	Feed as the sole ration from the time chickens are placed on litter until past the time when coccidiosis is ordinarily a hazard. Not for chickens over 16 weeks of age; do not feed to laying chickens; as sole source of amprolium; not for use as a treatment for outbreaks of coccidiosis. Bacitracin as bacitracin methylene disalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	016592
(5) Amprolium 113.5 and ethopabate 36.3.	Bacitracin 4 to 50	2. Broiler chickens: As an aid in prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur; for improved feed efficiency.	Feed as the sole ration from the time chickens are placed on litter until market weight. Not for chickens over 16 weeks of age; do not feed to laying chickens; as sole source of amprolium; not for use as a treatment for coccidiosis. Bacitracin zinc as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(6) Amprolium 113.5 and ethopabate 3.6.	Bambermycins 1 to 3.	Broiler chickens: As an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur; for increased rate of weight gain, improved feed efficiency.	Feed continuously as the sole ration; as sole source of amprolium. Bambermycins as provided by No. 016592 in § 510.600(c) of this chapter.	016592
(7) Amprolium 113.5 and ethopabate 36.3.	Virginiamycin 15	Broiler chickens; as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur; for increased rate of weight gain and improved feed efficiency.	Feed continuously as the sole ration; as sole source of amprolium. Do not feed to laying chickens. Not for chickens over 16 weeks of age. Virginiamycin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(8) Amprolium 113.5 and ethopabate 36.3.	Virginiamycin 5 to 15.	Broiler chickens; as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur; for increased rate of weight gain.	Feed continuously as the sole ration; as sole source of amprolium. Do not feed to laying chickens. Not for chickens over 16 weeks of age. Virginiamycin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(9) Amprolium 227 and ethopabate 3.6.	.....	For broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis.	Not for laying chickens	016592
(10) Amprolium 227 and ethopabate 3.6.	Chlortetracycline 100 to 200.	For chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption. Feed for 7 to 14 days.	054771
(11) Amprolium 227 and ethopabate 3.6.	Chlortetracycline 200 to 400.	For chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to chlortetracycline.	In low calcium feed containing 0.8% dietary calcium and 1.5% sodium sulfate; feed continuously as sole ration for 7 to 14 days; do not feed to chickens producing eggs for human consumption.	054771

§ 558.62 [Removed]

■ 7. Remove § 558.62.

■ 8. In § 558.76, revise paragraph (d)(3) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) Bacitracin methylene disalicylate may also be used in combination with:

(i) Amprolium as in § 558.55.

(ii) Amprolium and ethopabate as in § 558.58.

(iii) Decoquinate as in § 558.195.

(iv) Diclazuril as in § 558.198.

(v) Fenbendazole as in § 588.258.

(vi) Halofuginone as in § 558.265.

(vii) Hygromycin B as in § 588.274.

(viii) Ivermectin as in § 558.300.

(ix) Lasalocid sodium as in § 558.311.

(x) Monensin as in § 588.355.

(xi) Narasin as in § 558.363.

(xii) Nicarbazin alone and with narasin as in § 558.366.

(xiii) Nitarsone as in § 558.369.

(xiv) Robenidine as in § 558.515.

(xv) Salinomycin as in § 558.550.

(xvi) Semduramicin as in § 558.555.

(xvii) Zoalene as in § 558.680.

■ 9. In § 558.78, revise paragraph (d)(3) to read as follows:

§ 558.78 Bacitracin zinc.

* * * * *

(d) * * *

(3) Bacitracin zinc may also be used in combination with:

(i) Amprolium and ethopabate as in § 558.58.

(ii) Clopidol as in § 558.175.

(iii) Decoquinate as in § 558.195.

(iv) Lasalocid as in § 558.311.

(v) Monensin as in § 558.355.

(vi) Naracin as in § 558.363.

(vii) Nitarsone as in § 558.369.

(viii) Robenidine as in § 558.515.

(ix) Salinomycin as in § 558.550.

■ 10. In § 558.95, revise paragraph (d)(5) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(5) Bambermycins may also be used in combination with:

(i) Amprolium as in § 558.55.

(ii) Amprolium and ethopabate as in § 558.58.

(iii) Clopidal as in § 558.175.

(iv) Diclazuril as in § 558.198.

(v) Halofuginone as in § 558.265.

(vi) Lasalocid as in § 558.311.

(vii) Monensin as in § 558.355.

(viii) Narasin alone or with nicarbazin as in § 558.363.

(ix) Nicarbazin as in § 558.366.

(x) Salinomycin as in § 558.550.

(xi) Zoalene as in § 558.680.

§ 558.120 [Removed]

■ 11. Remove § 558.120.

■ 12. In § 558.128, revise paragraph (e)(7) to read as follows:

§ 558.128 Chlortetracycline.

* * * * *

(e) * * *

(7) Chlortetracycline may also be used in combination with:

(i) Amprolium and ethopabate as in § 558.58.

(ii) Bacitracin methylene disalicylate as in § 558.76.

(iii) Clopidol as in § 558.175.

(iv) Decoquinate as in § 558.195.

(v) Hygromycin B as in § 558.274.

(vi) Laidlomycin as in § 558.305.

(vii) Lasalocid as in § 558.311.

(viii) Monensin as in § 558.355.

(ix) Robenidine as in § 558.515.

(x) Salinomycin as in § 558.550.

(xi) Tiamulin as in § 558.600.

§ 558.175 [Amended]

■ 13. In § 558.175, remove paragraphs (d)(3) and (8); and redesignate paragraphs (d)(4) through (7) as paragraphs (d)(3) through (6), respectively, and paragraphs (d)(9) through (11) as paragraphs (d)(7) through (9), respectively.

§ 558.195 [Amended]

■ 14. In § 558.195, remove paragraphs (e)(1)(iv) and (v) and redesignate paragraphs (e)(1)(vi) through (ix) as paragraphs (e)(1)(iv) through (vii), respectively.

§ 558.198 [Amended]

■ 15. In § 558.198, remove paragraphs (d)(1)(iii), (iv), and (vi) and redesignate paragraphs (d)(1)(v), (vii), and (viii) as paragraphs (d)(1)(iii), (iv), and (v), respectively.

■ 16. In § 558.248, remove paragraph (d)(3); and revise the section heading to read as follows:

§ 558.248 Erythromycin.

* * * * *

■ 17. In § 558.265, remove and reserve paragraphs (d)(1)(v) and (viii) and (d)(3)(ii) and revise the section heading to read as follows:

§ 558.265 Halofuginone.

* * * * *

■ 18. Revise § 558.274 to read as follows:

§ 558.274 Hygromycin B.

(a) *Approvals.* See sponsor numbers in § 510.600(c) of this chapter for Type A medicated articles or Type B medicated feeds as follow:

(1) No. 000986: 2.4 and 8 grams per pound (g/lb).

(2) Nos. 012286 and 051311: 2.4 g/lb.

(3) No. 017790: 0.6 g/lb.

(4) No. 054771: 0.6 and 1.6 g/lb.

(b) *Related tolerances.* See § 556.330 of this chapter.

(c) *Conditions of use.* It is used in feed as follows:

(1) *Chickens*—

Hygromycin B in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 8 to 12		Chickens: For control of infestation of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*).	Withdraw 3 days before slaughter	000986 012286 017790 054771
(ii) 8 to 12	Tylosin 4 to 50	Chickens: For control of infestations of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); growth promotion and feed efficiency.	Withdraw 3 days before slaughter. Tylosin as tylosin phosphate as provided by No. 000986 in § 510.600 of this chapter.	000986

(2) *Swine*—

Hygromycin B in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 12		Swine: For control of infestation of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostomum dentatum*), and whipworms (*Trichuris suis*).	Withdraw 15 days before slaughter	000986 012286 017790 054771
(ii) 12	Tylosin 10 to 100	Swine: For control of infestations of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostomum dentatum*), and whipworms (*Trichuris suis*); growth promotion and feed efficiency.	Feed continuously as follows: Animal weight (lbs.): Up to 40 . . . 20 to 100 [1] 41 to 100 . . . 20 to 40 [1] 101 to market weight . . . 10 to 20 [1] Withdraw 15 days before slaughter. Tylosin as tylosin phosphate as provided by No. 000986 in § 510.600 of this chapter.	000986

[1] Amount of Tylosin (g/t).

■ 19. In § 558.311:
■ a. In paragraph (e)(1)(ii), remove the entries for:
■ i.Roxarsone 45.4 (0.005 pct);
■ ii. Roxarsone 45.4 plus bambermycins 1 (0.00011 pct);
■ iii. Roxarsone 45.4 plus lincomycin 2.0;
■ iv. Roxarsone 45.4 plus bacitracin 10 to 25;
■ v. Roxarsone 45.4 plus bacitracin 10 or 30; and
■ vi. Roxarsone 45.4 plus bacitracin methylene disalicylate 50'';
■ b. In paragraph (e)(1)(xv), remove the entry for ''Roxarsone 22.7 to 45.4''; and
■ c. Revise paragraph (e)(5).

The revision reads as follows:

§ 558.311 Lasalocid.

* * * * *

(e) * * *

(5) Lasalocid may also be used in combination with:

(i) Melengestrol acetate alone or in combination with tylosin as in § 558.342.

(ii) [Reserved]

■ 20. In § 558.325, revise paragraph (d)(3) to read as follows:

§ 558.325 Lincomycin.

* * * * *

(d) * * *

(3) Lincomycin may also be used in combination with:

(i) Amprolium and ethopabate as in § 558.58.

(ii) Clopidol as in § 558.175.

(iii) Decoquinate as in § 558.195.

(iv) Fenbendazole as in § 588.258.

(v) Halofuginone as in § 558.265.

(vi) Ivermectin as in § 558.300.

(vii) Lasalocid sodium as in § 558.311.

(viii) Monensin as in § 588.355.

(ix) Nicarbazin alone and with narasin as in § 558.366.

(x) Pyrantel as in § 558.485.

(xi) Robenidine as in § 558.515.

(xii) Salinomycin as in § 558.550.

(xiii) Zoalene as in § 558.680.

■ 21. In § 558.340, revise the section heading to read as follows:

§ 558.340 Maduramicin.

* * * * *

§ 558.355 [Amended]

■ 22. In § 558.355:
■ a. Remove and reserve paragraphs (f)(1)(ii), (vii), (x), (xi), (xii), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxiii), (xxvi), and (xxvii);
■ b. Remove and reserve paragraphs (f)(4)(vi) and (vii); and
■ c. Remove the second instance of a paragraph designated (f)(4)(iv) (following (f)(4)(vii).

§ 558.363 [Amended]

■ 23. In § 558.363:
■ a. Remove and reserve paragraphs (a)(2), (a)(5) and (a)(6);
■ b. Remove paragraphs (d)(1)(ii), (v), (vii), (viii), and (ix) and (d)(3)(iii) and (iv); and
■ c. Redesignate paragraphs (d)(1)(iii) and (iv) as paragraphs (d)(1)(ii) and (iii), paragraph (d)(1)(vi) as paragraph (d)(1)(iv), and paragraphs (d)(1)(x) and (xi) as paragraphs (d)(1)(v) and (vi).

§ 558.366 [Amended]

■ 24. In the table in § 558.366(d):
■ a. In the ''Nicarbazin in grams per ton'' column, following the entry for ''27 to 45'', remove the row entries for:
■ i. Narasin 27 to 45, bacitracin methylene disalicylate 50, and roxarsone 22.7 to 45.4; and
■ ii. Narasin 27 to 45 and roxarsone 22.7 to 45.4;
■ b. In the ''Nicarbazin in grams per ton'' column, following the entry for ''90.8 to 181.6 (0.01 to 0.02 pct)'', remove the row entry for ''Bacitracin methylene disalicylate 4 to 50 and roxarsone 22.7 to 45.4''; and
■ c. In the ''Nicarbazin in grams per ton'' column, following the entry for ''113.5 (0.0125 pct)'', remove the row entries for:
■ i. Roxarsone 22.7 (0.0025); and
■ ii. Roxarsone 22.7 (0.0025) plus lincomycin 2 (0.0004).''

§ 558.460 [Amended]

■ 25. In § 558.460, remove and reserve paragraph (d)(2).

■ 26. In § 558.515, in paragraph (d), remove the entries for ''Bacitracin (as bacitracin methylene disalicylate) 50 and roxarsone 22.7 to 45.4'', ''Bacitracin (as bacitracin methylene disalicylate) 100 to 200 and roxarsone 22.7 to 45.4'', and ''Roxarsone 22.5 to 45.4 (0.005 percent)''; and revise the section heading to read as follows:

§ 558.515 Robenidine.

* * * * *

§ 558.530 [Removed]

■ 27. Remove § 558.530.

§ 558.550 [Amended]

■ 28. In § 558.550, remove and reserve paragraphs (d)(1)(ii), (iv), (v), (viii), (ix), (xii), (xiv), (xv), (xvii), (xviii), (xix), and (xxiv) and (d)(3)(iv), (vi), and (vii).

§ 558.555 [Amended]

■ 29. In § 558.555, remove paragraphs (d)(3), (d)(4), and (d)(8); and redesignate paragraphs (d)(5), (d)(6), and (d)(7) as paragraphs (d)(3), (d)(4), and (d)(5), respectively.

§ 558.575 [Amended]

■ 30. In § 558.575, remove and reserve paragraph (d)(1)(ii).

■ 31. In § 558.680, revise paragraph (d) to read as follows:

§ 558.680 Zoalene.

* * * * *

(d) *Conditions of use*—(1) *Chickens*—

Zoalene in grams/ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 36.3 to 113.5	.....	Replacement chickens: For development of active immunity to coccidiosis.	Grower ration not to be fed to birds over 14 weeks of age; as follows:	054771

Growing conditions	Starter ration Grams per ton	Grower ration Grams per ton
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%)

Zoalene in grams/ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(ii) 36.3–113.5	Bacitracin methylene disalicylate 4 to 50.	Replacement chickens: For development of active immunity to coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration as in subtable in item (i). Grower ration not to be fed to birds over 14 weeks of age. Bacitracin methylene disalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(iii) 36.3–113.5	Bacitracin methylene disalicylate 50.	Replacement chickens: For development of active immunity to coccidiosis; and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration as in subtable in item (i). Grower ration not to be fed to birds over 14 weeks of age. Bacitracin methylene disalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(iv) 36.3–113.5	Bacitracin methylene disalicylate 100 to 200.	Replacement chickens: For development of active immunity to coccidiosis; and as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration as in subtable in item (i). To control necrotic enteritis, start medication at first clinical signs of disease; vary bacitracin dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Bacitracin methylene disalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(v) 113.5	.....	Broiler chickens: For prevention and control of coccidiosis.	Feed continuously as sole ration	054771
(vi) 113.5	Bacitracin methylene disalicylate 4 to 50.	Broiler chickens: As an aid in the prevention and control of coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Bacitracin methylene disalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(vii) 113.5	Bacitracin methylene disalicylate 50.	Broiler chickens: For prevention and control of coccidiosis; and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration. Bacitracin methylene disalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(viii) 113.5	Bacitracin methylene disalicylate 100 to 200.	Broiler chickens: For prevention and control of coccidiosis; and as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration. To control necrotic enteritis, start medication at first clinical signs of disease; vary bacitracin dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Bacitracin methylene disalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(ix) 113.5	Bambermycins 1	Broiler chickens: As an aid in the prevention and control of coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Do not feed to chickens over 14 weeks of age. Bambermycins as provided by No. 016592 in § 510.600(c) of this chapter.	016592
(x) 113.5	Lincomycin 2	Broiler chickens: As an aid in the prevention and control of coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Do not feed to laying chickens. As lincomycin hydrochloride monohydrate provided by No. 054771 in § 510.600(c) of this chapter.	054771

(2) *Turkeys*—

Zoalene in grams/ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 113.5 to 170.3	.....	Growing turkeys: For prevention and control of coccidiosis.	Feed continuously as sole ration. For turkeys grown for meat purposes only. Do not feed to laying birds.	054771
(ii) 113.5 to 170.3	Bacitracin methylene disalicylate 4 to 50.	Growing turkeys: For prevention and control of coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration until 14 to 16 weeks of age. For turkeys grown for meat purposes only. Do not feed to laying birds.	054771

Dated: February 3, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–02617 Filed 2–26–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–370]

Schedules of Controlled Substances: Placement of Alfaxalone into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Administrator of the Drug Enforcement Administration (DEA) places the substance 5α-pregnan-3α-ol-11,20-dione (alfaxalone), including its salts, isomers, and salts of isomers, into schedule IV of the Controlled Substances Act (CSA). This scheduling action is pursuant to the CSA which requires that such actions be made on the record after opportunity for a hearing through formal rulemaking. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule IV controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities with, or possess) or propose to handle alfaxalone and substances containing alfaxalone.

DATES: *Effective Date:* March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Ruth A. Carter, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

The DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purpose of this action. 21 U.S.C. 801–971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, controlled substances are classified into one of five schedules based upon their potential for abuse, their currently accepted medical use, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, ''add to such a schedule or transfer between such schedules any drug or other substance if he (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by [21 U.S.C. 812(b)] for the schedule in which such drug is to be placed . . ..'' Pursuant to 28 CFR 0.100(b), the Attorney General has delegated this scheduling authority to the Administrator of the DEA. 28 CFR 0.104.

The CSA provides that scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS),[1] or (3) on the petition of any interested party. 21 U.S.C. 811(a). This action is based on a recommendation from the Assistant Secretary of the HHS and on an evaluation of all other relevant data by the DEA. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule IV controlled substances on persons who handle or propose to handle alfaxalone.

Background

Alfaxalone (5α-pregnan-3α-ol-11,20-dione, previously spelled ''alphaxalone''), a substance with central nervous system (CNS) depressant properties, is a neurosteroid that is a derivative of 11-alpha-hydroxy-progesterone. On October 23, 2012, the Food and Drug Administration (FDA) published a final rule to approve a New Animal Drug Application (NADA, 141–342) for alfaxalone (Alfaxan®), as an intravenous injectable anesthetic, for the induction and maintenance of anesthesia and for induction of anesthesia followed by maintenance of anesthesia with an inhalant anesthetic, in cats and dogs (77 FR 64715). Alfaxalone primarily acts as an agonist at the gamma-aminobutyric acid (GABA) receptor-channel complex, with a mechanism of action at this site similar to that of barbiturates like phenobarbital (schedule IV) and methohexital (schedule IV), benzodiazepines such as diazepam (schedule IV) and midazolam (schedule IV), as well as the anesthetic agents

[1] As set forth in a memorandum of understanding entered into by the HHS, the Food and Drug Administration (FDA), and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1995. In addition, because the Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations, for purposes of this document, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.''

propofol (proposed to be controlled as a schedule IV substance, 75 FR 66195, Oct. 27, 2010) and fospropofol (schedule IV).

HHS and DEA Eight-Factor Analyses

On July 17, 2012, the Assistant Secretary of the HHS provided to the DEA a scientific and medical evaluation and scheduling recommendation entitled ''Basis for the Recommendation to Control Alfaxalone in Schedule IV of the Controlled Substances Act.'' After considering the eight factors in 21 U.S.C. 811(c), including consideration of the substance's abuse potential, legitimate medical use, and dependence liability, the Assistant Secretary of the HHS recommended that alfaxalone be controlled in schedule IV of the CSA under 21 U.S.C. 812(b). In response, the DEA conducted its own eight-factor analysis of alfaxalone pursuant to 21 U.S.C. 811(c). Both the DEA and HHS analyses are available in their entirety in the public docket for this rule (Docket Number DEA–370) at *www.regulations.gov* under ''Supporting and Related Material.''

Determination to Schedule Alfaxalone

After a review of the available data, including the scientific and medical evaluation and the scheduling recommendation from the HHS, the Administrator of the DEA published in the **Federal Register** a notice of proposed rulemaking (NPRM) entitled ''Schedules of Controlled Substances: Placement of Alfaxalone into Schedule IV'' which proposed placement of alfaxalone in schedule IV of the CSA. 78 FR 17895, March 25, 2013. The proposed rule provided an opportunity for interested persons to file a request for hearing in accordance with DEA regulations by April 24, 2013. No requests for such a hearing were received by the DEA. The NPRM also provided an opportunity for interested persons to submit written comments on the proposal on or before April 24, 2013.

Comments Received

The DEA received four comments on the proposed rule to schedule alfaxalone. Two commenters were in favor of controlling alfaxalone as a schedule IV controlled substance. One commenter was in favor of controlling alfaxalone as a schedule V controlled substance rather than a schedule IV controlled substance, and one commenter opposed the control of alfaxalone.

Support of the Proposed Rule: Two commenters supported controlling alfaxalone as a schedule IV controlled substance. These commenters indicated support for controlling alfaxalone under the CSA based on the abuse potential of the substance. Because alfaxalone is indicated for use as a pre-anesthetic and anesthetic in cats and dogs, these commenters felt that the abuse potential was particularly high for persons with access to the substance in the medical field. One commenter noted that controlling alfaxalone as a schedule IV controlled substance is appropriate because it could be abused in a manner similar to other schedule IV CNS depressants. The commenters believe that controlling alfaxalone as a schedule IV controlled substance will provide the necessary controls to prevent its diversion.

DEA Response: The DEA appreciates the comments in support of this rulemaking.

Opposition to the Proposed Rule: Two commenters opposed the proposal to control alfaxalone as a schedule IV controlled substance.

Request Not to Control Alfaxalone: One commenter opposed controlling alfaxalone at all and stated that alfaxalone does not have the same abuse potential as Xanax® (alprazolam) (schedule IV), Valium® (diazepam) (schedule IV), and other benzodiazepines. The commenter also stated that controlling alfaxalone under the CSA would make it difficult for veterinarians and animal surgeons to acquire the drug. Lastly, this commenter stated that alfaxalone is ''unheard of outside of the veterinary community and does not have a 'black market' as do the other schedule IV drugs.''

DEA Response: The DEA does not agree. Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, ''add to such a schedule or transfer between such schedules any drug or other substance if he (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by [21 U.S.C. 812(b)] for the schedule in which such drug is to be placed * * *.'' This scheduling action was initiated when the DEA received a scientific and medical evaluation and a scheduling recommendation to control alfaxalone as a schedule IV controlled substance from the Assistant Secretary of the HHS. In accordance with 21 U.S.C. 811(c), the DEA conducted its own analysis of the eight factors determinative of control or removal: (1) Its actual or relative potential for abuse; (2) scientific evidence of its pharmacological effect, if known; (3) the state of current scientific knowledge regarding the drug or other substance; (4) its history and current pattern of abuse; (5) the scope, duration, and significant of abuse; (6) what, if any, risk there is to the public health; (7) its psychic or physiological dependence liability; and (8) whether the substance is an immediate precursor of a substance already controlled. The summary of each factor as analyzed by the HHS and the DEA, and as considered by the DEA in this scheduling action, was provided in the proposed rule. Both the DEA and the HHS analyses have been made available in their entirety under ''Supporting and Related Material'' of the public docket for this rule at *www.regulations.gov* under Docket Number DEA–370.

Based on the review of the HHS evaluation and scheduling recommendation and all other relevant data, the DEA found that alfaxalone has an abuse potential similar to other schedule IV drugs, including the benzodiazepines diazepam and midazolam, the barbiturates phenobarbital and methohexital, and also the anesthetic agents propofol (proposed to be controlled as a schedule IV substance, 75 FR 66195, Oct. 27, 2010) and fospropofol. Alfaxalone also acts as an agonist at the gamma-aminobutyric acid (GABA) receptor-channel complex, with a mechanism of action at the site similar to that of benzodiazepines like diazepam(schedule IV) and midazolam (schedule IV). This mechanism of action is also similar to that of other schedule IV controlled substances, including barbiturates like phenobarbital and methohexital, and also anesthetic agents like propofol (proposed to be controlled as a schedule IV substance, 75 FR 66195, Oct. 27, 2010) and fospropofol. It should be noted that alfaxalone's current exclusive use as a veterinary anesthetic drug and the asserted conclusion that there is no ''black market'' for the substance, do not negate its abuse potential and associated risk of diversion. The DEA and HHS analyses demonstrate that alfaxalone does have the potential for abuse and meets the necessary findings on potential for abuse, currently accepted medical use, and physical or psychological dependence for placement in schedule IV.

Burdens associated with acquiring a substance as a result of control under the CSA are not relevant factors to the determination whether a substance should be controlled or under what schedule a substance should be placed if it is controlled. *See* 21 U.S.C. 811 and 812. Nonetheless, the DEA disagrees with the unsupported statement that making alfaxalone a controlled substance would make it difficult for veterinarians and animal surgeons to

acquire the drug. Several other anesthetic substances used by veterinarians and other practitioners are controlled under the CSA. All veterinarians and animal surgeons who are authorized by the State in which they practice to handle alfaxalone and who are registered with the DEA to dispense controlled substances may acquire alfaxalone once it is controlled. As discussed in the Regulatory Flexibility Analysis section of this document, currently 98% of DEA registrants (most of which are small businesses) are already authorized to handle schedule IV controlled substances.

Request to Control Alfaxalone as a Schedule V Substance:

One commenter stated that alfaxalone should be controlled as a schedule V controlled substance. This commenter stated that there was limited information available regarding alfaxalone's abuse. The commenter also stated that alfaxalone is a new introduction to the United States veterinary market, and controlling it in the least stringent schedule, schedule V, would minimize burdens on practitioners using it for legitimate purposes, while also imposing controls to account for its abuse potential.

DEA Response: The DEA does not agree. The DEA thoroughly reviewed the scientific and medical evaluation and the scheduling recommendation to control alfaxalone as a schedule IV controlled substance from the HHS.

Additionally, the DEA conducted its own analysis of the eight factors in accordance with 21 U.S.C. 811(b) and made the findings required under 21 U.S.C. 812(b) for the placement of alfaxalone in schedule IV. Based on the review of the HHS's evaluation and scheduling recommendation and all other relevant and available data, the DEA found that alfaxalone has an abuse potential similar to other schedule IV controlled substances, including the benzodiazepines diazepam and midazolam, barbiturates phenobarbital and methohexital, and also the anesthetic agents propofol (proposed to be controlled as a schedule IV substance, 75 FR 66195, Oct. 27, 2010) and fospropofol.

While not relevant to the substance's schedule placement, the DEA does not agree with this commenter's concern that the requirements applicable to schedule IV controlled substances are more burdensome than the requirements applicable to schedule V controlled substances. There are only very minimal differences in handling requirements between schedule IV and schedule V controlled substances. Most importantly for purposes of responding to this comment, the physical security requirements for schedule IV and V controlled substances are the same. Also, under the CSA, schedule V controlled substances may be dispensed without a prescription, while schedule IV controlled substances may only be dispensed pursuant to a prescription. However, this distinction is of no consequence with regard to alfaxalone because alfaxalone cannot be prescribed by a veterinarian, nor may alfaxalone be dispensed by a pharmacist pursuant to a prescription. Federal law restricts this drug to use by or on the order of a licensed veterinarian (i.e., it may only be administered). 21 CFR 522.52; *see also* 21 CFR 514.8.

Scheduling Conclusion

Based on consideration of all comments, the scientific and medical evaluation and accompanying recommendation of the HHS, and based on the DEA's consideration of its own eight-factor analysis, the DEA finds that these facts and all other relevant data constitute substantial evidence of potential for abuse of alfaxalone. As such, the DEA is scheduling alfaxalone as a controlled substance under the CSA.

Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA outlines the findings required for placing a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of the HHS and review of all available data, the Administrator of the DEA, pursuant to 21 U.S.C. 812(b)(4), finds that:

(1) 5α-pregnan-3α-ol-11,20-dione (alfaxalone) has a low potential for abuse relative to the drugs or other substances in schedule III; the overall abuse potential of alfaxalone is comparable to the schedule IV controlled substances diazepam, midazolam, phenobarbital, methohexital, propofol (proposed to be controlled as a schedule IV substance, 75 FR 66195, Oct. 27, 2010), and fospropofol;

(2) 5α-pregnan-3α-ol-11,20-dione (alfaxalone) has a currently accepted medical use in treatment in the United States; alfaxalone was approved for marketing by the FDA as a veterinary anesthetic product for the induction and maintenance of anesthesia in cats and in dogs; and

(3) Abuse of 5α-pregnan-3α-ol-11,20-dione (alfaxalone) may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

Based on these findings, the Administrator of the DEA concludes that alfaxalone, including its salts, isomers, and salts of isomers, warrants control in schedule IV of the CSA. 21 U.S.C. 812(b)(4).

Requirements for Handling Alfaxalone

Upon the effective date of this final rule, any person who handles alfaxalone is subject to the CSA's schedule IV regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, engagement in research, and conduct of instructional activities, of schedule IV controlled substances including the following:

Registration. Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities with) alfaxalone, or who desires to handle alfaxalone, must be registered with the DEA to conduct such activities, pursuant to 21 U.S.C. 822, 823, 957 and 958, and in accordance with 21 CFR parts 1301 and 1312 as of March 31, 2014. Any person who currently handles alfaxalone and is not registered with the DEA must submit an application for registration and may not continue to handle alfaxalone as of March 31, 2014 unless the DEA has approved that application, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

Security. Alfaxalone is subject to schedule III–V security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and 871(b) and in accordance with 21 CFR 1301.71–1301.93, as of March 31, 2014.

Labeling and Packaging. All labels and labeling for commercial containers of alfaxalone must comply with 21 U.S.C. 825 and 958(e) and be in accordance with 21 CFR part 1302, as of March 31, 2014.

Inventory. Every DEA registrant who possesses any quantity of alfaxalone on the effective date of this final rule must to take an inventory of all stocks of alfaxalone on hand as of March 31, 2014, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who becomes registered with the DEA after March 31, 2014 must take an initial inventory of all stocks of controlled substances (including alfaxalone) on hand on the date the registrant first engages in the handling

of controlled substances, pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including alfaxalone) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Records. All DEA registrants must maintain records with respect to alfaxalone pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304, 1307, and 1312, as of March 31, 2014.

Prescriptions. The DEA recognizes that alfaxalone is currently only approved as an injectable anesthetic that is administered to patients. The DEA also acknowledges that Federal law currently restricts alfaxalone to use by or on the order of a licensed veterinarian, and it may not be dispensed pursuant to a prescription. 21 CFR 522.52; *see also* 21 CFR 514.8. A ''prescription'' is defined as an order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription). 21 CFR 1300.01(b). However, any lawful prescriptions for alfaxalone or prescriptions for products containing alfaxalone must comply with 21 U.S.C. 829 and must be issued in accordance with 21 CFR parts 1306 and 1311 subpart C as of March 31, 2014.

Importation and Exportation. All importation and exportation of alfaxalone must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and be in accordance with 21 CFR part 1312 as of March 31, 2014.

Criminal Liability. Any activity involving alfaxalone not authorized by, or in violation of, the CSA, occurring as of March 31, 2014 is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule does not have tribal implications warranting the application of Executive Order 13175. The rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The purpose of this final rule is to place alfaxalone, including its salts, isomers, and salts of isomers, into schedule IV of the CSA. By this final rule, alfaxalone will remain in schedule IV unless and until additional scheduling action is taken to either transfer it between the schedules or to remove it from the list of schedules. *See* 21 U.S.C. 811 and 812. No less restrictive measures (i.e., no control or control in schedule V) enable the DEA to meet its statutory obligations under the CSA.

On September 6, 2012, the FDA approved for use in the United States one product containing alfaxalone, which will have FDA marketing exclusivity and patent protection for several years. Accordingly, the number of currently identifiable manufacturers, distributors, importers, and exporters for alfaxalone is extremely small. The manufacturer who obtained FDA approval for the sale of alfaxalone product in the United States is not considered a ''small entity'' in accordance with the RFA and Small Business Administration (SBA) size standards. Upon expiration of the exclusivity period, and more likely, the related patent, additional products containing alfaxalone may receive approvals from the FDA, and thus additional manufacturers, distributors, importers, and exporters will handle alfaxalone. Whether such manufacturers, distributors, importers, or exporters may qualify as small entities cannot be determined at this time.

There are currently approximately 1.5 million controlled substance registrations, representing approximately 381,000 entities. The DEA estimates that 371,000 (97%) of these entities are considered ''small entities'' in accordance with the RFA and SBA size standards. 5 U.S.C. 601(6) and 15 U.S.C. 632. Due to the wide variety of unidentifiable and unquantifiable variables that potentially could influence the dispensing rates of new chemical entities, the DEA is unable to determine the number of small entities which might handle alfaxalone. However, because alfaxalone is a new chemical entity that is a veterinary anesthetic administered in veterinary settings and is not prescribed to ultimate users, the number of entities affected by the rule would be far fewer than the 381,000 entities represented by all DEA registrants. There are approximately 66,361 veterinarian practitioners and 23 veterinarian distributors (schedules III–V) registered with the DEA.

Despite the fact that the number of small entities possibly impacted by this rule could not be determined, the DEA concludes that they would not experience a significant economic impact as a result of this rule. The DEA estimates all anticipated alfaxalone handlers to be DEA registrants, and currently 98% of DEA registrants (most of which are small entities) are authorized to handle schedule IV controlled substances. Even assuming that all of these registrants were to handle alfaxalone (e.g., practitioners administer the substance), the costs that they would incur as a result of alfaxalone's scheduling would be nominal.

Registrants that dispense (e.g., administer) alfaxalone are expected to incur nominal additional security, inventory, and recordkeeping costs. These registered entities have already established and implemented the systems and processes required to handle schedule IV controlled

substances and can easily absorb the costs of administering alfaxalone with nominal to no additional economic burden. For example, because DEA-veterinary practitioners are likely to already be schedule IV handlers, they already secure schedule II–V controlled substances in a securely locked, substantially constructed cabinet. See 21 CFR 1301.75(b). Accordingly, the requirement to secure all controlled substances containing alfaxalone would not impose a significant economic burden upon DEA-registered practitioners as the infrastructure and materials for doing so are already in place. Labeling their products is routine and in the normal course of business of manufacturers. The DEA therefore assumes that the cost of compliance with 21 CFR part 1302 as a result of this final rule is nominal. Correspondingly, the DEA estimates that the cost of the labeling and packaging requirements of this final rule is nominal for the authorized manufacturer. Accordingly, compliance would not require significant additional manpower, capital investment, or recordkeeping burdens.

Because of these facts, this rule will not result in a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*), the DEA has determined and certifies pursuant to UMRA that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA). This rule will not result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Amend § 1308.14 by redesignating paragraphs (c)(1) through (c)(53) as paragraphs (c)(2) through (c)(54) and adding new paragraph (c)(1) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(1) Alfaxalone—(2731)

* * * * *

Dated: February 21, 2014.

Michele M. Leonhart,

Administrator.

[FR Doc. 2014–04332 Filed 2–26–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Parts 50 and 59

[Docket No. 145; AG Order No. 3420–2014]

Policy Regarding Obtaining Information From, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the policy of the Department of Justice regarding the use of subpoenas, certain court orders, and search warrants, to obtain information from, or records of, members of the news media. The rule also amends the Department's policy regarding questioning, arresting, or charging members of the news media.

DATES: This rule is effective on February 27, 2014.

FOR FURTHER INFORMATION CONTACT: Monique Roth, Director, Office of Enforcement Operations, Criminal Division, (202) 514–6809.

SUPPLEMENTARY INFORMATION:

Discussion

In May of 2013, the Department initiated a comprehensive evaluation of its practices and policies regarding the use of subpoenas, court orders, and search warrants to obtain information from, or records of, members of the news media. As part of this process, the Department convened a series of meetings to solicit input from a wide range of news media stakeholders, First Amendment academics and advocates, and Members of Congress. Based on this review, the Department issued a report on July 12, 2013, announcing changes to the Department's policies.

This final rule revises the existing provisions in the Department's regulations at 28 CFR 50.10. The revisions are intended to ensure that, in determining whether to seek information from, or records of, members of the news media, the Department strikes the proper balance among several vital interests: (1) Protecting national security, (2) ensuring public safety, (3) promoting effective law enforcement and the fair administration of justice, and (4) safeguarding the essential role of the free press in fostering government accountability and an open society.

The revisions also ensure more robust oversight by senior Department officials; centralize the internal review and evaluation process; set out specific standards for the use and handling of information obtained from, or records of, members of the news media; and extend the policies to cover the use of subpoenas, court orders issued pursuant to 18 U.S.C. 2703(d) and 3123, and search warrants.

The changes to the policy also strengthen the presumption that Department attorneys will negotiate with, and provide advance notice to, affected members of the news media when investigators seek to obtain from third parties communications records or

business records related to ordinary newsgathering activities.

A cross-reference to the new policy has been added to part 59, pertaining to documentary materials held by third parties.

Regulatory Certifications

Administrative Procedure Act, 5 U.S.C. 553

Because, for purposes of the Administrative Procedure Act, this regulation concerns general statements of policy, or rules of agency organization, procedure, or practice, notice and comment and a delayed effective date are not required. See 5 U.S.C. 553(b)(A).

Regulatory Flexibility Act

Because this final rule is not promulgated as a final rule under 5 U.S.C. 553 and was not required under that section to be published as a proposed rule, the requirements for the preparation of a regulatory flexibility analysis under 5 U.S.C. 604(a) do not apply. In any event, the Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to administrative matters affecting the Department.

Executive Orders 12866 and 13563—Regulatory Planning and Review

This action has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. This rule is limited to agency organization, management, or personnel matters as described by section 3(d)(3) of Executive Order 12866 of September 30, 1993, and therefore is not a ''regulation'' as defined by that Executive Order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 of February 5, 1996.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 of August 4, 1999, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4.

Congressional Review Act

This action pertains to agency management and does not substantially affect the rights or obligations of non-agency parties; accordingly, this action is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects

28 CFR Part 50

Administrative practice and procedure, Crime, News, Media, Subpoena, Search warrants.

28 CFR Part 59

Administrative practice and procedure, Privacy, Search warrants.

Accordingly, for the reasons stated in the preamble, parts 50 and 59 of title 28 of the Code of Federal Regulations are amended as follows:

PART 50—STATEMENTS OF POLICY

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1162; 28 U.S.C. 509, 510, 516, and 519; 42 U.S.C. 1921 *et seq.,* 1973c; and Pub. L. 107–273, 116 Stat. 1758, 1824.

■ 2. Section 50.10 is revised to read as follows:

§ 50.10 Policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media.

(a) *Statement of principles.* (1) Because freedom of the press can be no broader than the freedom of members of the news media to investigate and report the news, the Department's policy is intended to provide protection to members of the news media from certain law enforcement tools, whether criminal or civil, that might unreasonably impair ordinary newsgathering activities. The policy is not intended to extend special protections to members of the news media who are the focus of criminal investigations for conduct not based on, or within the scope of, ordinary newsgathering activities.

(2) In determining whether to seek information from, or records of, members of the news media, the approach in every instance must be to strike the proper balance among several vital interests: protecting national security, ensuring public safety, promoting effective law enforcement and the fair administration of justice, and safeguarding the essential role of the free press in fostering government accountability and an open society.

(3) The Department views the use of certain law enforcement tools, including subpoenas, court orders issued pursuant to 18 U.S.C. 2703(d) or 3123, and search warrants to seek information from, or records of, non-consenting members of the news media as extraordinary measures, not standard investigatory practices. Subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123, in particular, may be used, after authorization by the Attorney General, or by another senior official in accordance with the exceptions set forth in paragraph (c)(3) of this section, only to obtain information from, or records of, members of the news media when the information sought is essential to a successful investigation, prosecution, or litigation; after all reasonable alternative attempts have been made to obtain the information from alternative sources; and after negotiations with the affected member of the news media have been pursued, unless the Attorney General determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(4) When the Attorney General has authorized the use of a subpoena, court order issued pursuant to 18 U.S.C. 2703(d) or 3123, or warrant to obtain from a third party communications records or business records of a member of the news media, the affected member of the news media shall be given reasonable and timely notice of the Attorney General's determination before the use of the subpoena, court order, or warrant, unless the Attorney General determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an

imminent risk of death or serious bodily harm.

(b) *Scope.*—(1) *Covered individuals and entities.* (i) The policy governs the use of certain law enforcement tools to obtain information from, or records of, members of the news media.

(ii) The protections of the policy do not extend to any individual or entity who is or is reasonably likely to be—

(A) A foreign power or agent of a foreign power, as those terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);

(B) A member or affiliate of a foreign terrorist organization designated under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a));

(C) Designated as a Specially Designated Global Terrorist by the Department of the Treasury under Executive Order No. 13224 of September 23, 2001 (66 FR 49079);

(D) A specially designated terrorist as that term is defined in 31 CFR 595.311 (or any successor thereto);

(E) A terrorist organization as that term is defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi));

(F) Committing or attempting to commit a crime of terrorism, as that offense is described in 18 U.S.C. 2331(5) or 2332b(g)(5);

(G) Committing or attempting the crime of providing material support or resources, as that term is defined in 18 U.S.C. 2339A(b)(1), to a terrorist organization; or

(H) Aiding, abetting, or conspiring in illegal activity with a person or organization described in paragraphs (b)(1)(ii)(A) through (G) of this section.

(2) *Covered law enforcement tools and records.* (i) The policy governs the use by law enforcement authorities of subpoenas or, in civil matters, other similar compulsory process such as a civil investigative demand (collectively ''subpoenas'') to obtain information from members of the news media, including documents, testimony, and other materials; and the use by law enforcement authorities of subpoenas, or court orders issued pursuant to 18 U.S.C. 2703(d) (''2703(d) order'') or 18 U.S.C. 3123 (''3123 order''), to obtain from third parties ''communications records'' or ''business records'' of members of the news media.

(ii) The policy also governs applications for warrants to search the premises or property of members of the news media, pursuant to Federal Rule of Criminal Procedure 41; or to obtain from third-party ''communication service providers'' the communications records of members of the news media, pursuant to 18 U.S.C. 2703(a) and (b).

(3) *Definitions.* (i)(A) ''Communications records'' include the contents of electronic communications as well as source and destination information associated with communications, such as email transaction logs and local and long distance telephone connection records, stored or transmitted by a third-party communication service provider with which the member of the news media has a contractual relationship.

(B) Communications records do not include information described in 18 U.S.C. 2703(c)(2)(A), (B), (D), (E), and (F).

(ii) A ''communication service provider'' is a provider of an electronic communication service or remote computing service as defined, respectively, in 18 U.S.C. 2510(15) and 18 U.S.C. 2711(2).

(iii)(A) ''Business records'' include records of the activities, including the financial transactions, of a member of the news media related to the coverage, investigation, or reporting of news, which records are generated or maintained by a third party with which the member of the news media has a contractual relationship. Business records are limited to those that could provide information about the newsgathering techniques or sources of a member of the news media.

(B) Business records do not include records unrelated to ordinary newsgathering activities, such as those related to the purely commercial, financial, administrative, or technical, operations of a news media entity.

(C) Business records do not include records that are created or maintained either by the government or by a contractor on behalf of the government.

(c) *Issuing subpoenas to members of the news media, or using subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123 to obtain from third parties communications records or business records of a member of the news media.* (1) Except as set forth in paragraph (c)(3) of this section, members of the Department must obtain the authorization of the Attorney General to issue a subpoena to a member of the news media; or to use a subpoena, 2703(d) order, or 3123 order to obtain from a third party communications records or business records of a member of the news media.

(2) Requests for the authorization of the Attorney General for the issuance of a subpoena to a member of the news media, or to use a subpoena, 2703(d) order, or 3123 order to obtain communications records or business records of a member of the news media, must personally be endorsed by the United States Attorney or Assistant Attorney General responsible for the matter.

(3) *Exceptions to the Attorney General authorization requirement.* (i)(A) A United States Attorney or Assistant Attorney General responsible for the matter may authorize the issuance of a subpoena to a member of the news media (e.g., for documents, video or audio recordings, testimony, or other materials) if the member of the news media expressly agrees to provide the requested information in response to a subpoena. This exception applies, but is not limited, to both published and unpublished materials and aired and unaired recordings.

(B) In the case of an authorization under paragraph (c)(3)(i)(A) of this section, the United States Attorney or Assistant Attorney General responsible for the matter shall provide notice to the Director of the Criminal Division's Office of Enforcement Operations within 10 business days of the authorization of the issuance of the subpoena.

(ii) In light of the intent of the policy to protect freedom of the press, ordinary newsgathering activities, and confidential news media sources, authorization of the Attorney General will not be required of members of the Department in the following circumstances:

(A) To issue subpoenas to news media entities for purely commercial, financial, administrative, technical, or other information unrelated to ordinary newsgathering activities; or for information or records relating to personnel not involved in ordinary newsgathering activities.

(B) To issue subpoenas to members of the news media for information related to public comments, messages, or postings by readers, viewers, customers, or subscribers, over which the member of the news media does not exercise editorial control prior to publication.

(C) To use subpoenas to obtain information from, or to use subpoenas, 2703(d) orders, or 3123 orders to obtain communications records or business records of, members of the news media who may be perpetrators or victims of, or witnesses to, crimes or other events, when such status (as a perpetrator, victim, or witness) is not based on, or within the scope of, ordinary newsgathering activities.

(iii) In the circumstances identified in paragraphs (c)(3)(ii)(A) through (C) of this section, the United States Attorney or Assistant Attorney General responsible for the matter must—

(A) Authorize the use of the subpoena or court order;

(B) Consult with the Criminal Division regarding appropriate review and safeguarding protocols; and

(C) Provide a copy of the subpoena or court order to the Director of the Office of Public Affairs and to the Director of the Criminal Division's Office of Enforcement Operations within 10 business days of the authorization.

(4) *Considerations for the Attorney General in determining whether to authorize the issuance of a subpoena to a member of the news media.* (i)(A) In criminal matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that a crime has occurred, and that the information sought is essential to a successful investigation or prosecution. The subpoena should not be used to obtain peripheral, nonessential, or speculative information.

(B) In civil matters, there should be reasonable grounds to believe, based on public information or information from non-media sources, that the information sought is essential to the successful completion of the investigation or litigation in a case of substantial importance. The subpoena should not be used to obtain peripheral, nonessential, cumulative, or speculative information.

(ii) The government should have made all reasonable attempts to obtain the information from alternative, non-media sources.

(iii)(A) The government should have pursued negotiations with the affected member of the news media, unless the Attorney General determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. Where the nature of the investigation permits, the government should have explained to the member of the news media the government's needs in a particular investigation or prosecution, as well as its willingness to address the concerns of the member of the news media.

(B) The obligation to pursue negotiations with the affected member of the news media, unless excused by the Attorney General, is not intended to conflict with the requirement that members of the Department secure authorization from the Attorney General to question a member of the news media as required in paragraph (f)(1) of this section. Accordingly, members of the Department do not need to secure authorization from the Attorney General to pursue negotiations.

(iv) The proposed subpoena generally should be limited to the verification of published information and to such surrounding circumstances as relate to the accuracy of the published information.

(v) In investigations of unauthorized disclosures of national defense information or of classified information, where the Director of National Intelligence, after consultation with the relevant Department or agency head(s), certifies to the Attorney General the significance of the harm raised by the unauthorized disclosure and that the information disclosed was properly classified and reaffirms the intelligence community's continued support for the investigation and prosecution, the Attorney General may authorize the Department, in such investigations, to issue subpoenas to members of the news media. The certification will be sought not more than 30 days prior to the submission of the approval request to the Attorney General.

(vi) Requests should be treated with care to avoid interference with ordinary newsgathering activities or claims of harassment.

(vii) The proposed subpoena should be narrowly drawn. It should be directed at material and relevant information regarding a limited subject matter, should cover a reasonably limited period of time, should avoid requiring production of a large volume of material, and should give reasonable and timely notice of the demand.

(5) *Considerations for the Attorney General in determining whether to authorize the use of a subpoena, 2703(d) order, or 3123 order to obtain from third parties the communications records or business records of a member of the news media.* (i)(A) In criminal matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that a crime has been committed, and that the information sought is essential to the successful investigation or prosecution of that crime. The subpoena or court order should not be used to obtain peripheral, nonessential, or speculative information.

(B) In civil matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that the information sought is essential to the successful completion of the investigation or litigation in a case of substantial importance. The subpoena should not be used to obtain peripheral, nonessential, cumulative, or speculative information.

(ii) The use of a subpoena or court order to obtain from a third party communications records or business records of a member of the news media should be pursued only after the government has made all reasonable attempts to obtain the information from alternative sources.

(iii)(A) The government should have pursued negotiations with the affected member of the news media, unless the Attorney General determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(B) The obligation to pursue negotiations with the affected member of the news media, unless excused by the Attorney General, is not intended to conflict with the requirement that members of the Department secure authorization from the Attorney General to question a member of the news media as set forth in paragraph (f)(1) of this section. Accordingly, members of the Department do not need to secure authorization from the Attorney General to pursue negotiations.

(iv) In investigations of unauthorized disclosures of national defense information or of classified information, where the Director of National Intelligence, after consultation with the relevant Department or agency head(s), certifies to the Attorney General the significance of the harm raised by the unauthorized disclosure and that the information disclosed was properly classified and reaffirms the intelligence community's continued support for the investigation and prosecution, the Attorney General may authorize the Department, in such investigations, to use subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123 to obtain communications records or business records of a member of the news media. The certification will be sought not more than 30 days prior to the submission of the approval request to the Attorney General.

(v) The proposed subpoena or court order should be narrowly drawn. It should be directed at material and relevant information regarding a limited subject matter, should cover a reasonably limited period of time, and should avoid requiring production of a large volume of material.

(vi) If appropriate, investigators should propose to use search protocols designed to minimize intrusion into potentially protected materials or

newsgathering activities unrelated to the investigation, including but not limited to keyword searches (for electronic searches) and filter teams (reviewing teams separate from the prosecution and investigative teams).

(d) *Applying for warrants to search the premises, property, or communications records of members of the news media.* (1) Except as set forth in paragraph (d)(4) of this section, members of the Department must obtain the authorization of the Attorney General to apply for a warrant to search the premises, property, or communications records of a member of the news media.

(2) All requests for authorization of the Attorney General to apply for a warrant to search the premises, property, or communications records of a member of the news media must personally be endorsed by the United States Attorney or Assistant Attorney General responsible for the matter.

(3) In determining whether to authorize an application for a warrant to search the premises, property, or contents of communications records of a member of the news media, the Attorney General should take into account the considerations identified in paragraph (c)(5) of this section.

(4) Members of the Department may apply for a warrant to obtain work product materials or other documentary materials of a member of the news media pursuant to the ''suspect exception'' of the Privacy Protection Act (''PPA suspect exception''), 42 U.S.C. 2000aa(a)(1) and (b)(1), only when the member of the news media is a focus of a criminal investigation for conduct not based on, or within the scope of, ordinary newsgathering activities. In such instances, members of the Department must secure authorization from a Deputy Assistant Attorney General for the Criminal Division.

(5) Members of the Department should not be authorized to apply for a warrant to obtain work product materials or other documentary materials of a member of the news media under the PPA suspect exception, 42 U.S.C. 2000aa(a)(1) & (b)(1), if the sole purpose is to further the investigation of a person other than the member of the news media.

(6) A Deputy Assistant Attorney General for the Criminal Division may authorize, under an applicable PPA exception, an application for a warrant to search the premises, property, or communications records of an individual other than a member of the news media, but who is reasonably believed to have ''a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication.'' 42 U.S.C. 2000aa(a) and (b).

(7) In executing a warrant authorized by the Attorney General or by a Deputy Assistant Attorney General for the Criminal Division investigators should use search protocols designed to minimize intrusion into potentially protected materials or newsgathering activities unrelated to the investigation, including but not limited to keyword searches (for electronic searches) and filter teams (reviewing teams separate from the prosecution and investigative teams).

(e) *Notice to affected member of the news media.* (1)(i) When the Attorney General has authorized the use of a subpoena, court order, or warrant to obtain from a third party communications records or business records of a member of the news media, the affected member of the news media shall be given reasonable and timely notice of the Attorney General's determination before the use of the subpoena, court order, or warrant, unless the Attorney General determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(ii) The mere possibility that notice to the affected member of the news media, and potential judicial review, might delay the investigation is not, on its own, a compelling reason to delay notice.

(2) When the Attorney General has authorized the use of a subpoena, court order, or warrant to obtain communications records or business records of a member of the news media, and the affected member of the news media has not been given notice of the Attorney General's determination before the use of the subpoena, court order, or warrant, the United States Attorney or Assistant Attorney General responsible for the matter shall provide to the affected member of the news media notice of the order or warrant as soon as it is determined that such notice will no longer pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. In any event, such notice shall occur within 45 days of the government's receipt of any return made pursuant to the subpoena, court order, or warrant, except that the Attorney General may authorize delay of notice for an additional 45 days if he or she determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. No further delays may be sought beyond the 90-day period.

(3) The United States Attorney or Assistant Attorney General responsible for the matter shall provide to the Director of the Office of Public Affairs and to the Director of the Criminal Division's Office of Enforcement Operations a copy of any notice to be provided to a member of the news media whose communications records or business records were sought or obtained at least 10 business days before such notice is provided to the affected member of the news media, and immediately after such notice is, in fact, provided to the affected member of the news media.

(f) *Questioning members of the news media about, arresting members of the news media for, or charging members of the news media with, criminal conduct they are suspected of having committed in the course of, or arising out of, the coverage or investigation of news, or while engaged in the performance of duties undertaken as members of the news media.* (1) No member of the Department shall subject a member of the news media to questioning as to any offense that he or she is suspected of having committed in the course of, or arising out of, the coverage or investigation of news, or while engaged in the performance of duties undertaken as a member of the news media, without notice to the Director of the Office of Public Affairs and the express authorization of the Attorney General. The government need not view the member of the news media as a subject or target of an investigation, or have the intent to prosecute the member of the news media, to trigger the requirement that the Attorney General must authorize such questioning.

(2) No member of the Department shall seek a warrant for an arrest, or conduct an arrest, of a member of the news media for any offense that he or she is suspected of having committed in the course of, or arising out of, the coverage or investigation of news, or while engaged in the performance of duties undertaken as a member of the news media, without notice to the Director of the Office of Public Affairs and the express authorization of the Attorney General.

(3) No member of the Department shall present information to a grand jury seeking a bill of indictment, or file an information, against a member of the

news media for any offense that he or she is suspected of having committed in the course of, or arising out of, the coverage or investigation of news, or while engaged in the performance of duties undertaken as a member of the news media, without notice to the Director of the Office of Public Affairs and the express authorization of the Attorney General.

(4) In requesting the Attorney General's authorization to question, to arrest or to seek an arrest warrant for, or to present information to a grand jury seeking an indictment or to file an information against, a member of the news media for an offense that he or she is suspected of having committed during the course of, or arising out of, the coverage or investigation of news, or while engaged in the performance of duties undertaken as a member of the news media, a member of the Department shall state all facts necessary for a determination by the Attorney General.

(g) *Exigent circumstances.* (1) A Deputy Assistant Attorney General for the Criminal Division may authorize the use of a subpoena or court order, as described in paragraph (c) of this section, or the questioning, arrest, or charging of a member of the news media, as described in paragraph (f) of this section, if he or she determines that the exigent use of such law enforcement tool or technique is necessary to prevent or mitigate an act of terrorism; other acts that are reasonably likely to cause significant and articulable harm to national security; death; kidnapping; substantial bodily harm; conduct that constitutes a specified offense against a minor (for example, as those terms are defined in section 111 of the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. 16911), or an attempt or conspiracy to commit such a criminal offense; or incapacitation or destruction of critical infrastructure (for example, as defined in section 1016(e) of the USA PATRIOT Act, 42 U.S.C. 5195c(e)).

(2) A Deputy Assistant Attorney General for the Criminal Division may authorize an application for a warrant, as described in paragraph (d) of this section, if there is reason to believe that the immediate seizure of the materials at issue is necessary to prevent the death of, or serious bodily injury to, a human being, as provided in 42 U.S.C. 2000aa(a)(2) and (b)(2).

(3) Within 10 business days of a Deputy Assistant Attorney General for the Criminal Division approving a request under paragraph (g) of this section, the United States Attorney or Assistant Attorney General responsible for the matter shall provide to the Attorney General and to the Director of the Office of Public Affairs a statement containing the information that would have been given in requesting prior authorization.

(h) *Failure to comply with policy.* Failure to obtain the prior approval of the Attorney General, as required by this policy, may constitute grounds for an administrative reprimand or other appropriate disciplinary action.

(i) *General provision.* This policy 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.

PART 59—GUIDELINES ON METHODS OF OBTAINING DOCUMENTARY MATERIALS HELD BY THIRD PARTIES

■ 3. The authority citation for part 59 continues to read as follows:

Authority: Sec. 201, Pub. L. 96–440, 94 Stat. 1879 (42 U.S.C. 2000aa–11).

■ 4. Section 59.3 is revised by adding a new sentence at the end of paragraph (d) to read as follows:

§ 59.3 Applicability.

* * * * *

(d) * * * For the use of a warrant to obtain information from, or records of, members of the news media, see the Department's statement of policy set forth in § 50.10 of this chapter.

Dated: February 21, 2013.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2014–04239 Filed 2–26–14; 8:45 am]

BILLING CODE 4410–14–P

POSTAL SERVICE

39 CFR Part 501

Revisions to the Requirements for Authority to Manufacture and Distribute Postage Evidencing Systems

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This rule updates the security and revenue protection features of the Computerized Meter Resetting System (CMRS) and the PC postage payment methodology to reflect changes to the audit profession's reporting standards on controls at service organizations.

DATES: This rule is effective March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Marlo Kay Ivey, Business Programs Specialist, Payment Technology, U.S. Postal Service, at 202–268–7613.

SUPPLEMENTARY INFORMATION: When the Postal Service was mandated to comply with Sarbanes-Oxley regulations beginning with the financial statements for the fiscal year ending September 30, 2010, the Postal Service required a Statement on Auditing Standards (SAS) 70 Type II Report from each of our providers. Subsequently, the American Institute of Certified Public Accountants (AICPA) issued new guidance to the audit profession on reporting standards for controls at service organizations, superseding the SAS 70 standards. Accordingly, the Postal Service is now requiring a Service Organization Controls SOC1 Type II report, in accordance with Statements on Standards for Attestation Engagements (SSAEs) 16, in the place of a SAS 70 Type II report, from each of our providers. We have also clarified that the expense incurred from obtaining this report will be paid by the provider.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure.

Accordingly, for the reasons stated, 39 CFR part 501 is amended as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

■ 1. The authority citation for 39 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

■ 2. Section 501.15 is amended by revising paragraph (i) to read as follows:

§ 501.15 Computerized Meter Resetting System.

* * * * *

(i) *Security and Revenue Protection.* To receive Postal Service approval to continue to operate systems in the CMRS environment, the RC must submit to a periodic examination of its CMRS system and any other applications and technology infrastructure that may have a material impact on Postal Service revenues, as determined by the Postal Service. The examination shall be performed by a qualified, independent audit firm and shall be conducted in accordance with the Statements on Standards for Attestation Engagements (SSAEs) No. 16, Service Organizations, developed by the American Institute of Certified Public Accountants (AICPA), as amended or superseded. Expenses associated with such examination shall be incurred by the RC. The examination

shall include testing of the operating effectiveness of relevant RC internal controls (SOC 1 Type II SSAE 16 Report). If the service organization uses another service organization (sub-service provider), Postal Service management should consider the nature and materiality of the transactions processed by the sub-service organization and the contribution of the sub-service organization's processes and controls in the achievement of the Postal Service's control objectives. The Postal Service should have access to the sub-service organization's SOC 1 Type II SSAE 16 report. The control objectives to be covered by the SOC 1 Type II SSAE 16 report are subject to Postal Service review and approval, and are to be provided to the Postal Service 30 days prior to the initiation of each examination period. As a result of the examination, the service auditor shall provide the RC and the Postal Service with an opinion on the design and operating effectiveness of the RC's internal controls related to the CMRS system and any other applications and technology infrastructure considered material to the services provided to the Postal Service by the RC. Such examinations are to be conducted on no less than an annual basis, and are to be as of and for the 12 months ended June 30 of each year (except for new contracts for which the examination period will be no less than the period from the contract date to the following June 30, unless otherwise agreed to by the Postal Service). The examination reports are to be provided to the Postal Service by August 15 of each year. To the extent that internal control weaknesses are identified in a SOC 1 Type II SSAE 16 report, the Postal Service may require the remediation of such weaknesses and review working papers and engage in discussions about the work performed with the service auditor. The Postal Service requires that all remediation efforts (if applicable) are completed and reported by the RC prior to the Postal Service's fiscal year end (September 30). In addition, the RC will be responsible for performing an examination of their internal control environment related to the CMRS system and any other applications and technology infrastructure considered material to the services provided to the Postal Service by the RC, in particular, disclosing changes to internal controls for the period of July 1 to September 30. This examination should be documented and submitted to the Postal Service by October 14. The RC will be responsible for all costs related to the examinations conducted by the service auditor and the RC.

* * * * *

■ 3. Section 501.16 is amended by revising paragraph (f) to read as follows:

§ 501.16 PC postage payment methodology.

* * * * *

(f) *Security and Revenue Protection.* To receive Postal Service approval to continue to operate PC Postage systems, the provider must submit to a periodic examination of its PC Postage system and any other applications and technology infrastructure that may have a material impact on Postal Service revenues, as determined by the Postal Service. The examination shall be performed by a qualified, independent audit firm and shall be conducted in accordance with the Statements on Standards for Attestation Engagements (SSAEs) No. 16, Service Organizations, developed by the American Institute of Certified Public Accountants (AICPA), as amended or superseded. Expenses associated with such examination shall be incurred by the provider. The examination shall include testing of the operating effectiveness of relevant provider internal controls (SOC1 Type II SSAE 16 Report). If the service organization uses another service organization (sub-service provider), Postal Service management should consider the nature and materiality of the transactions processed by the sub-service organization and the contribution of the sub-service organization's processes and controls in the achievement of the Postal Service's control objectives. The Postal Service should have access to the sub-service organization's SOC 1 Type II SSAE 16 report. The control objectives to be covered by the SOC 1 Type II SSAE 16 report are subject to Postal Service review and approval, and are to be provided to the Postal Service 30 days prior to the initiation of each examination period. As a result of the examination, the service auditor shall provide the provider and the Postal Service with an opinion on the design and operating effectiveness of the internal controls related to the PC Postage system, and any other applications and technology infrastructure considered material to the services provided to the Postal Service by the provider. Such examinations are to be conducted on no less than an annual basis, and are to be as of and for the 12 months ended June 30 of each year (except for new contracts for which the examination period will be no less than the period from the contract date to the following June 30, unless otherwise agreed to by the Postal Service). The examination reports are to be provided to the Postal Service by August 15 of each year. To the extent that internal control weaknesses are identified in a SOC 1 Type II SSAE 16 report, the Postal Service may require the remediation of such weaknesses, and review working papers and engage in discussions about the work performed with the service auditor. The Postal Service requires that all remediation efforts (if applicable) are completed and reported by the provider prior to the Postal Service's fiscal year end (September 30). In addition, the provider will be responsible for performing an examination of their internal control environment related to the PC Postage system and any other applications and technology infrastructure considered material to the services provided to the Postal Service by the provider, in particular, disclosing changes to internal controls for the period of July 1 to September 30. This examination should be documented and submitted to the Postal Service by October 14. The provider will be responsible for all costs related to the examinations conducted by the service auditor and the provider.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2014–03539 Filed 2–26–14; 8:45 am]

BILLING CODE 7710–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2013–0645; FRL–9907–08–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Transportation Conformity Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Wisconsin on August 1, 2013, for the purpose of establishing transportation conformity ''Conformity'' criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures. This revision replaces Wisconsin's

Conformity SIP that was approved on August 27, 1996.

DATES: This direct final rule will be effective April 28, 2014, unless EPA receives adverse comments by March 31, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0645, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2013–0645. 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 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 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, 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.

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 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 Michael Leslie, Environmental Engineer, at (312) 353–6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@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 this action?
II. What is EPA's analysis of Wisconsin's SIP revision?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this action?

Transportation conformity is required under section 176(c) of the Clean Air Act (Act) to ensure that transportation planning activities are consistent (''conform to'') with air quality planning goals in nonattainment/maintenance areas. The transportation conformity regulation is found in 40 CFR part 93 and provisions related to transportation conformity SIPs are found in 40 CFR 51.390. Transportation conformity applies to areas that are designated nonattainment or maintenance for the following transportation related criteria pollutants: Ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide, and nitrogen dioxide.

EPA originally promulgated the Federal transportation conformity criteria and procedures (''Transportation Conformity Rule'') on November 24, 1993 (58 FR 62188). On August 10, 2005, the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' (SAFETEA–LU) was signed into law. SAFETEA–LU revised section 176(c) of the Act which contains transportation conformity provisions. SAFETEA–LU streamlined the requirements for conformity SIPs. Under SAFETEA–LU, states are required to address and tailor only three sections of the rules in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and, 40 CFR 93.125(c). States are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule. Wisconsin's SIP revision updates the state's transportation conformity provisions, to be consistent with the Act as amended by SAFETEA–LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390).

II. What is EPA's analysis of Wisconsin's SIP revision?

A conformity SIP can be adopted as a state rule, as a memorandum of understanding (MOU), or memorandum of agreement (MOA). The appropriate form of the state conformity procedures depends upon the requirements of local or state law, as long as the selected form complies with all Act requirements for adoption, submission to EPA, and implementation of SIPs. EPA will accept state conformity SIPs in any form provided the state can demonstrate to EPA's satisfaction that, as a matter of state law, the state has adequate authority to compel compliance with the requirements of the conformity SIP.

Wisconsin concluded that this SIP revision in the form of a MOA will be enforceable through a number of Wisconsin Statutes, as with their original conformity SIP. These statutes authorize state agencies to enter into legally binding cooperative contracts for the receipt or furnishing of services. Wisconsin collaborated with the Wisconsin Department of Transportation (WisDOT), EPA, Federal Highway Administration (FHWA), Federal Transit Administration, the Southeast Regional Planning Commission (SEWRPC), Bay-Lake Regional Planning Commission (BLRPC), to develop the Transportation Conformity MOA. This MOA was agreed upon and signed by all of the above consultation parties.

EPA has evaluated this SIP submission and finds that the state has addressed the requirements of the Federal transportation conformity rule as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. The transportation conformity rule requires the states to develop their own processes and procedures for interagency consultation and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision did include processes and procedures to be followed by the MPO, state DOT, and U.S. DOT in consulting with the state and local air quality agencies and EPA before making transportation conformity determinations. Their transportation conformity SIP also included processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and U.S. DOT, and requires written commitments to control measures and mitigation measures (40 CFR 93.122(a)(4)(ii) and 93.125(c)).

EPA's review of the Wisconsin SIP revision indicates that is consistent with the Act as amended by SAFETEA–LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and has concluded that the submittal is approvable.

III. What action is EPA taking?

EPA is approving a SIP revision submitted by the State of Wisconsin, for the purpose of establishing transportation conformity criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective April 28, 2014 without further notice unless we receive relevant adverse written comments by March 31, 2014. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective April 28, 2014.

IV. Statutory and Executive Order Reviews

Under the Act, 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 Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2014. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Volatile organic compounds.

Dated: February 10, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2584 is amended by adding paragraph (c) to read as follows:

§ 52.2584 Control strategy; Particulate matter.

* * * * *

(c) Approval—On August 1, 2013, the State of Wisconsin submitted a revision to their Particulate Matter State Implementation Plan. The submittal established transportation conformity ''Conformity'' criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures.

■ 3. Section 52.2585 is amended by adding paragraph (bb) to read as follows:

§ 52.2585 Control strategy; Ozone.

* * * * *

(bb) Approval—On August 1, 2013, the State of Wisconsin submitted a revision to their Ozone State Implementation Plan. The submittal established transportation conformity ''Conformity'' criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures.

[FR Doc. 2014–04168 Filed 2–26–14; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 79, No. 39

Thursday, February 27, 2014

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2009–0017]

RIN 0579–AD41

Importation of Beef From a Region in Brazil

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would allow, under certain conditions, the importation of fresh (chilled or frozen) beef from a region in Brazil (the States of Bahia, Distrito Federal, Espirito Santo, Goias, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Parana, Rio Grande do Sul, Rio de Janeiro, Rondonia, Sao Paulo, Sergipe, and Tocantins). This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the proposed rule published December 23, 2013 (78 FR 77370) is reopened. We will consider all comments that we receive on or before April 22, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2009-0017-0010.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2009–0017, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0017* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Silvia Kreindel, Senior Staff Veterinarian, Regional Evaluation Services Staff, National Import Export Services, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 851–3313.

SUPPLEMENTARY INFORMATION: On December 23, 2013, we published in the **Federal Register** (78 FR 77370–77376, Docket No. APHIS–2009–0017) a proposal to allow, under certain conditions, the importation of fresh (chilled or frozen) beef from a region in Brazil (the States of Bahia, Distrito Federal, Espirito Santo, Goias, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Parana, Rio Grande do Sul, Rio de Janeiro, Rondonia, Sao Paulo, Sergipe, and Tocantins).

Comments on the proposed rule were required to be received on or before February 21, 2014. We are reopening the comment period on Docket No. APHIS–2009–0017 for an additional 60 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between February 22, 2014 (the day after the close of the original comment period) and the date of this notice.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 21st day of February 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–04308 Filed 2–26–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2014–BT–TP–0008]

RIN 1904–AD18

Energy Conservation Program for Certain Commercial and Industrial Equipment: Test Procedure for Commercial Water Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) is initiating a rulemaking and data collection process to consider amendments to the DOE test procedures for commercial water heaters, unfired hot water storage tanks, and hot water supply boilers (henceforth, ''commercial water heating equipment''). To inform interested parties and to facilitate this process, DOE has identified several issues associated with the current Federal test procedures on which DOE is particularly interested in receiving comment. In overview, the issues outlined in this document mainly concern updating the industry test standards that are currently incorporated by reference to the most recent versions, potential alternative methods for determining the efficiency of unfired storage tanks, potential changes to the method for setting the thermostat, potential clarifications in the thermal efficiency test method, and the potential inclusion of a test method for commercial heat pump water heaters (HPWH). DOE anticipates that these issues (as well as any others which are identified during the course of this rulemaking) may lead to proposed test procedure amendments in a subsequent notice of proposed rulemaking (NOPR). DOE welcomes written comments and data from the public on all aspects of this test procedure, including topics not raised in this RFI.

DATES: DOE will accept written comments, data, and information on or before March 31, 2014.

ADDRESSES: Interested parties are encouraged to submit comments electronically. However, interested persons may submit comments, identified by docket number EERE–2014–BT–TP–0008 and/or regulatory

identification number (RIN) 1904–AD18, by any of the following methods:

• *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: CommWaterHeatingEquip 2014TP0008@ee.doe.gov.* Include docket number EERE–2014–BT–TP–0008 and/or RIN 1904–AD18 in the subject line of the message. All comments should clearly identify the name, address, and, if appropriate, organization of the commenter. Submit electronic comments in WordPerfect, Microsoft Word, portable document format (PDF), or American Standard Code for Information Interchange (ASCII) file format, and avoid the use of special characters or any form of encryption.

• *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, RFI for Commercial Water Heating Equipment, Docket No. EERE–2014–BT–TP–0008 and/or RIN 1904–AD18, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted. For further information on the rulemaking process, see section III of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-TP-0008.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* Web site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

For information on how to submit a comment, or review other public comments and the docket, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

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I. Authority and Background

Title III, Part C [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which includes provisions covering the types of commercial water heating equipment that are the subject of this notice.[2] In general, this program is intended to improve the energy efficiency of certain types of commercial and industrial equipment. Relevant provisions of the Act include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). The testing requirements consist of test procedures that manufacturers of covered equipment must use as both the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA, and for making representations about the efficiency of that equipment. (42 U.S.C. 6314; 42 U.S.C. 6316)

The initial test procedures for commercial water heating equipment corresponded to those referenced in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) and Illuminating Engineering Society of North America (IESNA) Standard 90.1 (*i.e.,* ASHRAE Standard 90.1) which went into effect on October 24, 1992. EPCA requires that if an industry test procedure that is referenced in ASHRAE Standard 90.1 is amended, DOE must establish an amended test procedure to be consistent with the amended industry test procedure, unless DOE determines that the amended test procedure is not reasonably designed to produce test results which reflect the energy efficiency, energy use, or estimated operating costs of the equipment during a representative average use cycle; in addition, DOE must determine that the amended test procedure is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2) and (4))

If DOE determines that a test procedure amendment is warranted, it must publish a proposed test procedure and offer the public an opportunity to present oral and written comments. (42 U.S.C. 6314(b)(1)–(2)) To amend a test procedure, DOE must determine the extent to which the proposed test procedure would alter the equipment's measured energy efficiency. If DOE determines that the amended test procedure would alter the measured efficiency of the covered equipment, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6314(a)(4)(C); 42 U.S.C. 6293(e))

The Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, amended EPCA to require that at least once every 7 years, DOE must review test procedures for all covered equipment and either: (1) Amend the test procedures if the Secretary determines that the amended test procedures would more accurately or fully comply with the requirements of 42 U.S.C. 6314(a)(2)–(3),[3] or (2)

[1] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

[3] 42 U.S.C. 6314(a)(2) requires that test procedures be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial

publish a notice of determination not to amend a test procedure. (42 U.S.C. 6314(a)(1)(A)) Under this requirement, DOE must review the test procedures for commercial water heating equipment no later than May 16, 2019, which is 7 years after the most recent final rule amending the Federal test method for commercial water heating equipment.[4] The final rule resulting from this rulemaking will satisfy the requirement to review the test procedure for commercial water heating equipment within 7 years.

DOE's commercial water heating equipment test procedure is found in the Code of Federal Regulations (CFR) at 10 CFR 431.106, *Uniform test method for the measurement of energy efficiency of commercial water heaters and hot water supply boilers (other than commercial heat pump water heaters.*[5] DOE's test procedure for commercial water heating equipment provides a method for determining the thermal efficiency and standby loss of commercial water heating equipment. DOE initially incorporated by reference certain sections of the American National Standards Institute Standard (ANSI) Z21.10.3–1998 (ANSI Z21.10.3–1998), *Gas Water Heaters, Volume III, Storage Water Heaters, With Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous.* 69 FR 61974, 61984 (Oct. 21, 2004). On May 16, 2012, DOE published a final rule in the **Federal Register** to update the test procedures to incorporate by reference the most recent version of the relevant industry test procedure at the time of publication, ANSI Z21.10.3–2011 (same title). 77 FR 28928. The most recent updates did not materially alter the procedure.

The American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210, was signed into law on December 18, 2012 and amended EPCA to require that DOE publish a final rule establishing a uniform efficiency descriptor and accompanying test methods for residential water heaters and certain commercial water heating equipment. (42 U.S.C. 6295(e)(5)) AEMTCA required DOE to replace the current efficiency metric for residential water heaters (Energy Factor), and the current efficiency metrics for commercial water heaters (thermal efficiency and standby loss), with a uniform efficiency descriptor. (42 U.S.C. 6295(e)(5)(C)) Further, AEMTCA required that the uniform efficiency descriptor and accompanying test method apply, to the maximum extent possible, to all water heating technologies currently in use and to future water heating technologies. (42 U.S.C. 6295(e)(5)(H)) However, AEMTCA allowed DOE to exclude from the uniform efficiency descriptor specific categories of covered water heaters that do not have residential uses, that can be clearly described, and that are effectively rated using the current thermal efficiency and standby loss descriptors. (42 U.S.C. 6295(e)(5)(F))

DOE published an RFI on January 11, 2013 that requested feedback on several topics mainly associated with: (1) Currently available efficiency metrics and test procedures for rating the efficiency of residential and certain commercial water heaters; (2) the requirements for a uniform metric set forth in the AEMTCA; and (3) available options for DOE to address those statutory requirements. 78 FR 2340. After considering comments on the RFI, DOE published a NOPR in the **Federal Register** on November 4, 2013 (henceforth the ''November 2013 NOPR'') that proposed to update the test procedures for residential and certain commercial water heaters. 78 FR 66202.

The November 2013 NOPR proposed to modify the current residential water heater metric (Energy Factor) to be used as the uniform descriptor for all residential and certain commercial water heating equipment that have residential uses (*i.e.,* ''light commercial water heaters''). DOE also proposed to exclude certain water heaters from coverage under the uniform descriptor that have no residential use, can be clearly identified and described, and that are effectively rated using the current thermal efficiency and standby loss efficiency descriptors. 78 FR 66202, 66206 (Nov. 4, 2013).

In this rulemaking for the test procedures for commercial water heating equipment, DOE is only considering the commercial water heating equipment that was not covered by the test method developed for the November 2013 NOPR. DOE will update the scope of this rulemaking as necessary based on changes, if any, to the scope of the final rule establishing the uniform efficiency descriptor.

In support of its test procedure rulemaking, DOE conducts in-depth technical analyses of publicly-available test standards and other relevant information. DOE continually seeks data and public input to improve its testing methodologies to more accurately reflect customer use and to produce repeatable results. In general, DOE is requesting comment and supporting data regarding representative and repeatable methods for measuring the energy use of commercial water heating equipment. In particular, DOE seeks comment and information on the specific topics discussed below.

II. Discussion

A. Updated Industry Test Method

Beginning on May 13, 2013, the industry test method for measuring energy efficiency for commercial water heaters and hot water supply boilers referenced by the DOE test procedure is ANSI Z21.10.3–2011. 10 CFR 431.106. The DOE test procedure references Exhibit G1 and Exhibit G2 of ANSI Z21.10.3–2011 for measuring thermal efficiency and standby loss, respectively. The most recent edition of the industry test method, ANSI Z21.10.3–2013/Canadian Standards Association (CSA) 4.3–2013, *Gas-fired Water Heaters, Volume III, Storage Water Heaters with Input Ratings above 75,000 Btu per Hour, Circulating and Instantaneous,* was released in 2013. The only substantive difference between the 2011 and 2013 version, as it pertains to the sections referenced by DOE, were changes in the numbering and order of sections.

DOE plans to consider updating the DOE test procedure to reference the updated industry test method for measuring thermal efficiency and standby loss to ANSI Z21.10.3–2013/CSA 4.3 -2013 Annex E.1 and Annex E.2, respectively. These references shall replace previous references to Exhibits G1 and G2 in the 2011 industry test method.

Issue 1: DOE requests feedback on the appropriateness of using the ANSI Z21.10.3–2013/CSA 4.3–2013 industry test method to replace the current reference to ANSI Z21.10.3–2011. DOE is also interested in information and data pertaining to the repeatability of thermal efficiency and standby loss tests included in the ANSI Z21.10.3–2011

equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and not be unduly burdensome to conduct.

42 U.S.C. 6314(a)(3) requires that if the test procedure is a procedure for determining estimated annual operating costs, such procedure must provide that such costs are calculated from measurements of energy use in a representative average-use cycle (as determined by the Secretary), and from representative average unit costs of the energy needed to operate such equipment during such cycle. The Secretary must provide information to manufacturers of covered equipment regarding representative average unit costs of energy.

[4] DOE published a final rule in the **Federal Register** on May 16, 2012, that, in relevant part, amended its test procedure for commercial water-heating equipment. 77 FR 28928.

[5] DOE has reserved a place in its regulations for commercial heat pump water heaters at 10 CFR 431.107, *Uniform test method for the measurement of energy efficiency for commercial heat pump water heaters.*

test method and the ANSI Z21.10.3–2013 test method.

B. Unfired Hot Water Storage Tanks

DOE defines an ''unfired hot water storage tank'' as ''a tank used to store water that is heated externally, and that is industrial equipment.'' 10 CFR 431.102. As explained in the November 2013 NOPR, DOE has proposed to exclude unfired hot water storage tanks from the uniform efficiency descriptor required by AEMTCA. 78 FR 66202, 66207 (Nov. 4, 2013). Therefore, DOE plans to address the test procedure for this equipment in this rulemaking.

The Federal standard for unfired hot water storage tanks requires a minimum level of tank insulation, which is an R-value of 12.5. 10 CFR 431.110. DOE's test procedure for commercial water heating equipment at 10 CFR 431.106 does not currently include a method of testing energy efficiency of unfired hot water storage tanks. Although DOE does not specify a test method for unfired storage tanks in 10 CFR 431.106, DOE defines ''R-value'' as follows:

> *R-value* means the thermal resistance of insulating material as determined based on ASTM Standard Test Method C177–97 or C518–91 and expressed in (°F·ft²·h/Btu). 10 CFR 431.102.

Thus, to determine the R-value of the insulation, one of two industry standards must be used: (1) American Society for Testing and Materials (ASTM) C177–97, *Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus;* or (2) ASTM C518–10, *Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus.* DOE's definition of ''R-value'' inherently includes the industry test methods that should be used for determining the R-value of the storage tank insulation. However, the ASTM test methods C518 and C177 are not necessarily designed for measuring the R-value of test specimens, in this case unfired storage tanks.

While the two test methods both measure thermal transmission properties, they vary in complexity and apparent difficulty. The two test methods differ in complexity in terms of the measuring equipment required. For instance, ASTM C518 requires the use of a heat flux transducer to directly measure the heat flux through a specimen, while ASTM C177 only requires temperature sensors (*e.g.,* thermocouples, thermistors). However, both test methods have very similar test procedures, with the main similarity being the requirement of the establishment of thermal equilibrium within the apparatus.

There are also minor sampling differences between the two methods: ASTM C177 requires three sampling runs of at least thirty minutes, while ASTM C518 requires five samplings in intervals of at least ten minutes. However, ASTM C518 notes that the time between sample readings may need to be increased to thirty minutes or longer for high-resistance or high-density specimens. Another major difference between the two methods is that the ASTM C518 method requires the constant calculation of the specimen's thermal conductivity during a test run, while ASTM C177 only stipulates acquisition of temperature and power data (and calculates the thermal conductivity after the test is completed based on the data).

The two referenced ASTM test methods also share many similarities: Specifying the appropriate orientations of apparatus components, providing instructions for calibrating the test measurement system, and including procedures for specimen conditioning and stabilization. In addition, both test methods require flat specimens.

DOE is considering several options to improve the test method for commercial unfired hot water storage tanks. First, DOE is considering establishing a test method in 10 CFR 431.106 to clarify the applicable test procedure for unfired storage tanks. DOE is considering the potential for a single method of determining R-value to ensure that all R-values are determined on a consistent and equitable basis. However, DOE notes that unfired hot water storage tank manufacturers may not test the insulation of their tanks, but rather rely on the R-value information provided by the insulation manufacturer. Furthermore, DOE is considering whether having a test procedure that determines R-value for unfired storage tanks may be inappropriate, given that the methods for determining R-value are intended for determining the R-value of a flat sample, rather than an entire storage tank. In addition, DOE notes that determining the R-value of a single sample does not allow for the assessment of whether this value is applicable to the entire surface of the tank, including bottom, top, and fitting areas. DOE examined the product literature for the commercially-available unfired hot water storage tanks that DOE identified on the market and found that approximately 55 percent of the available models were shipped without any insulation, but rather were insulated in the field. Thus, DOE is considering alternative metrics, such as a standby loss test for unfired hot water storage tanks.

Since unfired hot water storage tanks do not consume gas or electricity, any test procedure to measure standby loss would not include a measurement of energy consumption. Rather, the test could entail running pre-heated water at a specified temperature through the vessel until a specified mean internal tank temperature is achieved, and measuring the thermal energy loss of the water over a given period of time. In addition, a method to measure storage volume of the tank would need to be developed, which could entail measuring the weight of the tank before and after filling it with water and calculating the storage volume based on the change in weight and density of water. DOE requests comment on several aspects of a potential standby loss test procedure for commercial unfired storage tanks including: (1) Target mean tank temperature; (2) ambient air temperature; (3) time duration of the test; (4) location of temperature sensors; and (5) whether to keep the tank connected or disconnected to inlet and outlet piping during the test.

Issue 2: DOE requests comment on whether updates to DOE's incorporated test methods for unfired hot water storage tanks are needed. In particular, DOE requests comment on whether a single test method for R-value should be used (and if so, which industry method is most appropriate), or whether replacing R-value with standby loss or some other metric as the energy efficiency descriptor for unfired hot water storage tanks would be preferable. If a new metric such as standby loss is more appropriate than R-value, DOE requests feedback on the best way to establish a standby loss test and the parameters of such a test method.

C. Setting the Thermostat for Commercial Water Heater Testing

DOE's test method for measuring energy efficiency of commercial water heating equipment currently requires specific conditions be met for inlet water temperature and the mean tank temperature before the test begins. In particular, ANSI Z21.10.3–2011, Exhibit G, section 1.g (which is incorporated by reference into the DOE test procedure) requires that before starting testing, the thermostat shall be set by starting with the water in the system at 70° ± 2 °F (21° ± 1 °C) and the maximum mean temperature of the water after the thermostat reduces the gas supply to a minimum, shall be 140° ± 5 °F (60°± 3 °C).

DOE understands that some units may experience issues pertaining to the above set point conditions. Specifically, for certain commercial water heaters, the mean tank temperature may not reach the required 140° ± 5 °F (60° ± 3 °C) after the first cut-out, even when the thermostat is set to the maximum setting. In such cases, the outlet temperature of the hot water may be at, or even well above 140° ± 5 °F (60° ± 3 °C); however, due to stratification in the tank, the mean tank temperature may not reach 140° ± 5 °F (60° ± 3 °C). The Department requests comment on potential test procedure changes to address this issue, including either a lower mean tank temperature requirement (if feasible) or a measurement of outlet water temperature rather than mean tank temperature.

Issue 3: DOE requests comment on potential test procedure changes to address issues with setting the tank thermostat, including (but not limited to) either a lower mean tank temperature requirement or a measurement of outlet water temperature rather than mean tank temperature.

D. Clarification of the Thermal Efficiency Test Procedure

DOE's test method for measuring the thermal efficiency of commercial water heaters incorporates by reference ANSI Z21.10.3–2011, Exhibit G, section 1. In particular, section 1.j describes the procedure used to conduct the 30-minute test and the technique to calculate the thermal efficiency. DOE notes that the formula used to compute the thermal efficiency does not account for any changes in heat content stored inside the water heater during the test. This change in stored energy could change the computation of thermal efficiency since some of the energy input to the water heater does not appear as heat delivered by the water heater. DOE requests comment on whether such a term is needed or whether provisions should be added to the test procedure to ensure that the temperature of the water in the tank does not change from the start of the 30-minute test to the end. Furthermore, DOE notes that the only specification on the rate of flow is that the outlet temperature is constant for 3 minutes. This specification makes no mention of the temperature within the water heater, the status of the burners or heating elements before and during the test, appropriate levels of flow rates, or the fuel consumption rate for water heaters with variable firing rates. DOE requests comment on whether a clarification is required to ensure that the flow rate implemented during this test is expected to require continuous burner operation or whether the water heater is allowed to cycle its burner to meet the demand imposed by the water draw.

Issue 4: DOE requests comment on whether clarifications are needed to the test procedure for determining thermal efficiency of commercial water heaters to indicate required flow rates and to account for potential changes in stored heat within the water heater from the start of the 30-minute test to the end.

E. Commercial Heat Pump Water Heaters

Currently, DOE does not have a test procedure for commercial heat pump water heaters (although a place is reserved at 10 CFR 431.107). However, DOE will consider whether to adopt test procedures for such equipment in this rulemaking. DOE is aware of two industry test methods that could potentially be adopted by DOE as the test method for commercial heat pump water heaters. In particular, DOE is aware of ANSI/ASHRAE Standard 118.1–2012, *Method of Testing for Rating Commercial Gas, Electric, and Oil Service Water-Heating Equipment,* and the Air-conditioning, Heating, and Refrigeration Institute (AHRI) Standard 1300, *2013 Standard for Performance Rating of Commercial Heat Pump Water Heaters.* ASHRAE 118.1–2012 includes test methods for determining coefficient of performance (COP) and standby loss for commercial heat pump water heaters, and AHRI 1300 references the ASHRAE 118.1–2012 test method and also specifies various rating conditions (*e.g.,* evaporator entering air temperatures (for air-source heat pump water heaters), evaporator entering water temperatures (for water-source heat pump water heaters), and condenser entering water temperatures). DOE may consider adopting these industry test methods or other methods as part of this rulemaking and seeks comment regarding the appropriate test method for commercial heat pump water heaters.

Issue 5: DOE seeks comment on appropriate test procedures for commercial heat pump water heaters. In particular, DOE is interested in receiving comments and information relating to the industry test methods that are available (*i.e.,* ASHRAE 118.1–2012 and AHRI 1300) and whether any modifications to those standards would be needed for adoption as the Federal test method.

F. Other Issues

DOE also seeks comments on other relevant issues that would affect the test procedures for commercial water heating equipment. Although DOE has attempted to identify those portions of the test procedure where it believes amendments may be warranted, interested parties are welcome to provide comments on any aspect of the test procedure, including updates of referenced standards, as part of this comprehensive 7-year-review rulemaking.

III. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this RFI no later than the date provided in the **DATES** section at the beginning of this RFI. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this RFI. After the close of the comment period, DOE will begin collecting data, conducting the analyses, and reviewing the public comments. These actions will be taken to aid in the development of a test procedure NOPR for commercial water heating equipment.

DOE considers public participation to be a very important part of the process for developing test procedures. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov*.

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this RFI and its test procedure for commercial water heating equipment, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests feedback on the appropriateness of using the ANSI Z21.10.3–2013/CSA 4.3–2013 industry test method to replace the reference to ANSI Z21.10.3–2011. DOE is also interested in information and data pertaining to the repeatability of thermal efficiency and standby loss tests included in the ANSI Z21.10.3–2011

test method and the ANSI Z21.10.3–2013 test method.

2. DOE requests comment on whether updates to DOE's incorporated test methods for unfired hot water storage tanks are needed. In particular, DOE requests comment on whether a single test method for R-value should be used (and if so, which industry method is most appropriate), or whether replacing R-value with standby loss as the energy efficiency descriptor for unfired hot water storage tanks would be preferable. If a new metric such as standby loss is more appropriate than R-value, DOE requests feedback on the best way to establish a standby loss test and the parameters of such a test method.

3. DOE requests comment on potential test procedure changes to address issues with setting the tank thermostat, including (but not limited to) either a lower mean tank temperature requirement or a measurement of outlet water temperature rather than mean tank temperature.

4. DOE requests comment on whether clarifications are needed to the test procedure for thermal efficiency of commercial water heaters to indicate required flow rates and to account for potential changes in thermal energy within the water heater from the start of the 30-minute test to the end.

5. DOE seeks comment on appropriate test procedures for commercial heat pump water heaters. In particular, DOE is interested in receiving comments and information relating to the industry test methods that are available (*i.e.,* ASHRAE 118.1–2012 and AHRI 1300) and whether any modifications to those standards would be needed for adoption as the Federal test method.

Issued in Washington, DC, on February 21, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2014–04304 Filed 2–26–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 45

[Docket No. FAA–2013–0933; Notice No. 14–01]

RIN 2120–AK20

Changes to Production Certificates and Approvals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing changes to its certification procedures and identification requirements for aeronautical products and articles. The proposed changes would: require production approval holders to identify an accountable manager who would be responsible for, and have authority over, their production operations and serve as the primary contact with the FAA; allow production approval holders to issue authorized release documents for aircraft engines, propellers, and articles; permit production certificate holders to manufacture and install interface components; require production approval holders to ensure that each supplier-provided product, article, or service conforms to the production approval holder's requirements and establish a supplier-reporting process for products, articles, or services that have been released from or provided by the supplier and subsequently found not to conform to the production approval holder's requirements; and remove the requirement that fixed-pitch wooden propellers be marked using an approved fireproof method. This proposal is necessary to update our regulations by revising certification and marking requirements to reflect the current global aeronautical manufacturing environment, thereby promoting aviation safety.

DATES: Send comments on or before May 28, 2014.

ADDRESSES: Send comments identified by docket number *[Insert docket number from heading]* using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Priscilla Steward or Robert Cook, Aircraft Certification Service, Production Certification Branch, AIR–220, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 385–6367; email: *priscilla.steward@faa.gov* or telephone: (202) 385–6358; email: *robert.cook@faa.gov.*

For legal questions concerning this action, contact Paul Greer, AGC–210, Office of the Chief Counsel, International Law, Legislation, and Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7930; email: *paul.g.greer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The Department of Transportation (''the Department) has the responsibility to develop transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation under Title 49, United States Code (49 USC), Subtitle 1, § 101. The Federal Aviation Administration (FAA or ''we/us/our'') is an agency of the Department. The FAA has general authority to issue rules regarding aviation safety, including minimum standards for articles and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers under 49 U.S.C. 106(g) and 44701. We may also prescribe regulations in the interest of safety for registering and identifying an aircraft engine, propeller, or article under 49 U.S.C. 44104.

The FAA is proposing to amend its regulations governing the certification procedures for products and articles and

its requirements for identification and registration marking. These changes would improve the quality standards applicable to manufacturers, which would help ensure that products and articles are produced as designed and are safe to operate. For these reasons, this proposed rule would be a reasonable and necessary exercise of our rulemaking authority and obligations.

List of Acronyms Used in This Proposed Rule

BAA—Bilateral Airworthiness Agreement
BASA—Bilateral Aviation Safety Agreement
CFR—Code of Federal Regulations
EASA—European Aviation Safety Agency
FAA—Federal Aviation Administration
IC—Interface Component
ICAO—International Civil Aviation Organization
NPRM—Notice of Proposed Rulemaking
PAH—Production Approval Holder
PC—Production Certificate
PLR—Production Limitation Record
PMA—Parts Manufacturer Approval
STC—Supplemental Type Certificate
TC—Type Certificate
TSO—Technical Standard Order

I. Overview of the Proposed Rule

In this NPRM, we are proposing changes to certification and marking requirements for products and articles. Regulations pertaining to certification requirements for products and articles are in Title 14, Code of Federal Regulations (14 CFR) part 21. Marking requirements are in part 45.

The regulations in part 21 do not require applicants for, or holders of, a production approval to identify an accountable manager. This proposal would require applicants and PAHs to identify an accountable manager. This individual would be responsible for, and have authority over, a PAH's production operations. This individual would also serve as a PAH's primary contact with the FAA. Additionally, the FAA proposes to amend part 21 to require applicants and PAHs to amend, where applicable, the documents required by §§ 21.135, 21.305 and 21.605 to reflect the appointment of an accountable manager. This proposal would adopt the requirement for an accountable manger currently contained within part 145 and harmonize part 21 with EASA regulations.

Currently, part 21 allows for an amendment to a PC holder's PLR so the PC holder can add a type-certificated product or article. The FAA proposes to amend part 21 to allow a PC holder to manufacture and install interface components (IC), under certain conditions and limitations. An IC would be defined as an article that serves as a functional interface between an aircraft and an aircraft engine, an aircraft engine and a propeller, or an aircraft and a propeller. An interface component would be designated by the holder of the type certificate (or the supplemental type certificate) who controls the approved design data for that article.

Additionally, regulations currently specify that a PAH must have procedures that ensure each supplier-furnished product or article conforms to its approved design. The regulations also require that when a nonconforming product or article is released from the supplier, the supplier must report the nonconformance to the PAH. The FAA proposes to amend part 21 to clarify that each supplier-provided product, article, or service would be required to conform to the PAH's requirements. Production approval holders would also have to establish a supplier-reporting process for products, articles, or services released from or provided by the supplier and subsequently found not to conform to their requirements.

Currently, a person may obtain an airworthiness approval for an aircraft engine, propeller, or article only from the FAA for a new or used aircraft engine, propeller, or article. Production approval holders may not issue these airworthiness approvals under current regulations. The FAA proposes to amend part 21 to allow PAHs to issue authorized release documents (using FAA Form 8130–3) for new and used aircraft engines, propellers, and articles. This will provide PAHs with privileges similar to those afforded European- and Canadian-approved manufacturers.

The regulations in part 45 require a propeller, propeller blade, or propeller hub to be marked using an approved fireproof method. The FAA proposes to amend part 45 to exclude fixed-pitch wooden propellers from the requirement that such markings be fireproof. This exclusion would allow manufacturers to mark their products in a practical manner that fully considers the inherent nature of wooden propellers.

II. Background

To date, part 21 has been amended numerous times since it was codified in 1964. Additionally, the origins of many regulations in part 21 can also be traced to the Civil Air Regulations codified in 1937.

Formerly, most manufacturers of aviation products and articles had a small, local supplier base. Production certificate holders oversaw the manufacture of replacement parts, and the international market for aviation products was relatively small. As a result, for many years the U.S. had few bilateral agreements with other countries for the export and import of aviation products, and these agreements were limited in scope.

Today, aviation products are manufactured world-wide. The number of suppliers has increased dramatically, and they manufacture a greater percentage of a given aircraft. Due to the global nature of manufacturing, forming business partnerships and agreements are common approaches to lower costs, share risks, and expand reachable markets. Manufacturers collaborate globally to reduce duplicate requirements for shared suppliers. The production of replacement parts under PMAs and the international market for aviation products have also increased dramatically. In recognition of global considerations regarding trade, commerce, and other matters, the U.S. has entered into over 30 bilateral agreements with foreign aviation authorities. These agreements are broad in scope and establish the framework for the international market.

A. Statement of the Problems

We are proposing changes to regulations governing the certification procedures for products and articles and part-marking requirements. These changes would improve the quality standards applicable to manufacturers, which would help to ensure that products and articles are produced as designed and are safe to operate. These changes would also make it easier for manufacturers to produce, obtain, and export products and articles while continuing to ensure their safety and quality.

1. Accountable Manager

Under current regulations, a PAH is not required to identify an accountable manager to serve as the primary contact with the FAA. The lack of having a primary contact identified often results in schedule delays and uncertainty for the FAA when conducting oversight activities. The FAA proposes to have PAHs identify an accountable manager who would serve as the primary contact with the FAA. Having an accountable manager would provide a single individual who would facilitate communication between the PAH and FAA.

Additionally, this best practice is currently required by part 145 for certificated repair stations and is also used within certain other segments of the industry. In order to obtain a production approval within EASA countries, a production organization is required to identify an accountable manager. This proposal continues the FAA's efforts to harmonize its

regulations with standards that have been adopted by foreign authorities.

2. Interface Components

Manufacturers cannot currently manufacture and install certain articles certificated as part of the airframe onto their type-certificated engines without an exemption. Engine manufacturers have petitioned for exemptions from the FAA to produce and install these articles on their type-certificated engines. These articles and other articles that serve a functional interface between an aircraft and an aircraft engine, and also between an aircraft engine and a propeller, or an aircraft and a propeller, are known as interface components (IC).

The FAA has found that a safety benefit exists by allowing the installation of airframe components onto an engine during production of the engine. The safety benefit occurs as a result of avoiding the disassembly of portions of the engine at the airframe manufacturing facility, or at an air carrier's maintenance facility, in order to attach airframe parts to the engine. Accordingly, engine manufacturers have been granted the authority to produce and install these articles under the provisions of exemptions. The FAA recognizes the safety benefit of this procedure and is therefore proposing to codify the relief provided by these exemptions and expand that relief to address ICs that have a functional interface between aircraft engines and propellers, and aircraft and propellers.

This proposal would permit a PC holder to manufacture and install ICs listed on its production limitation record (PLR) onto its type-certificated products under specified conditions and limitations.

3. Supplier Control

Supplier control continues to be a significant issue due to the increasing use of suppliers, both globally and domestically. Additionally, PAHs are using suppliers to manufacture a greater percentage of their products and articles. Production approval holders are using suppliers as assembly providers or as integrators of products, articles, and services provided by multiple suppliers. These practices have the effect of necessitating that quality control procedures be used more extensively throughout the supply chain, thereby complicating communication and oversight.

Due to the extensive use of suppliers in all phases of the production process, this proposal would require that each supplier-provided product, article, or service conform to the PAH's requirements and not necessarily to an approved design. This proposal would also require the PAH to establish a supplier-reporting process for products, articles, or services that have been released from or provided by the supplier and subsequently found not to conform to the PAH's requirements.

4. Issuance of Authorized Release Documents for Aircraft Engines, Propellers, and Articles

Presently, only the FAA can issue an airworthiness approval (e.g., FAA Form 8130–3). Industry has requested that a PAH for an aircraft engine, propeller, or article have the privilege of issuing this document for items produced under its production approval. The FAA agrees that significant benefits can be achieved by permitting a PAH to issue an authorized release document for aircraft engines, propellers, and articles it has manufactured since the PAH is responsible for ensuring that each product and article conforms to its approved design and is in a condition for safe operation. European and Canadian manufacturers currently may issue such documents. This proposal would further harmonize our regulations with those of foreign civil aviation authorities.

5. Marking of Wooden Propellers

Under current regulations, propellers, propeller blades, and hubs must be marked using an approved fireproof method. Due to the flammability properties of a solid wooden propeller, mounting a metal tag may be the only way to provide fireproof identification that would not likely be lost or destroyed in an accident. However, attaching a metal tag can break the moisture seal of a propeller, which could increase the potential for cracking and deterioration of the wood. For this reason, the FAA proposes to exclude fixed-pitch wooden propellers from the requirement that these markings be fireproof. All other aspects of the marking requirements would remain unchanged.

B. Related Actions

The FAA has proposed revisions to Advisory Circulars (AC) 21–43, Production Under 14 CFR Part 21, Subparts F, G, K, and O; AC 21–44, Issuance of Export Airworthiness Approvals Under 14 CFR Part 21 Subpart L; and AC 45–2, Identification and Registration Marking, to include the provisions of this proposal. Copies of these revised ACs are included in the docket.

III. Discussion of the Proposal

A. Accountable Manager

As noted, the FAA determined in a previous rulemaking, ''Repair Stations'' (66 FR 41088, August 6, 2001), that it was necessary for a repair station to have one individual, an accountable manager, who is responsible for ensuring repair station operations are conducted in accordance with part 145. Similarly, under this proposal, the FAA would require each applicant for, or holder of, a PC, PMA, or TSO authorization to identify an accountable manager.

In conducting our oversight activities, we have experienced delays and uncertainty by not knowing who at the PAH's organization has the authority to represent the PAH. There have been cases where persons have represented themselves to have authority to act on behalf of the PAH when, in fact, they did not. Such cases have occurred, for example, when a person has submitted a response to a letter of investigation, and that person did not have authority from the PAH to provide that response. Identification of an accountable manager would eliminate the problems presented by such a situation.

The proposal would require the accountable manager to confirm that the procedures described in the quality manual are in place and meet the requirements of the applicable regulations. Evidence of this confirmation can be shown by signing the quality manual before submitting it to the FAA. The FAA would not mandate that an individual in a specific position be identified as the accountable manager. However, the organization would have to identify a single point of contact who is knowledgeable of, and accountable for, maintaining the organization's FAA-approved production operations. This requirement is not intended to force the PAH to hire a new person to fill this position within its organization, but rather to identify a person to serve as the accountable manager.

As also clarified in the 2001 ''Repair Stations'' final rule, it is not the FAA's intent to impose personal liability on the accountable manager; that liability will remain with the PAH. The FAA notes that the term ''accountable manager'' is consistent with EASA terminology and would continue our harmonization efforts with foreign civil aviation authorities. The applicant or PAH would identify the accountable manager by providing that person's name and contact information to the FAA. Should a new accountable manager be identified by the PAH, the

PAH would have to amend the document required by §§ 21.135, 21.305, and 21.605, as appropriate, to reflect this change, and notify the FAA of this amendment, in accordance with §§ 21.146(a), 21.316(a), or 21.616(a).

The FAA understands the need for various business models and organizational structures. Currently, §§ 21.135(a), 21.305(a), and 21.605(a) require a PAH to provide the FAA with a document describing assigned responsibilities and delegated authority, and the functional relationship of those responsible for quality to management and other organizational components. This proposal would also revise the language in the second sentence of the referenced sections from ''At a minimum'' to ''In addition.'' This change is being made to avoid any misinterpretation as to what the document must include, specifically a description of how the organization will ensure compliance with the provisions of the subparts referenced in §§ 21.135, 21.305, and 21.605.

B. Interface Components

Engine manufacturers have petitioned for exemptions from the FAA to manufacture and install ICs on their type-certificated engines. In granting exemptions to General Electric (Exemption No. 10079) and Pratt & Whitney (Exemption No. 10531) to manufacture and install certain articles certificated as part of an airframe onto their engines, the FAA found that a safety benefit exists for the installation of airframe components onto an engine during production of the engine. Copies of these exemptions are included in the docket.

Aircraft manufacturers and air carriers frequently seek delivery of engines as a ''complete propulsion system,'' consisting of an engine and aircraft kits/parts associated with an aircraft from the engine manufacturer. Delivering a complete propulsion system makes engine installation safer and more efficient. This pre-installation delivery prevents redundant disassembly, torque breaks, handling damage, and additional retesting after the engine ships from the manufacturing facility.

Under current regulations, a PC holder is allowed to manufacture a product if it holds for the product a current TC, rights to the benefits of a TC under a licensing agreement, or an STC as specified in § 21.132. A manufacturer of a product currently cannot manufacture and install an IC on that type-certificated product when the IC is not part of that product's type design. This proposal would define an IC as an article that serves a functional interface between an aircraft and an aircraft engine, and also between an aircraft engine and a propeller, or an aircraft and a propeller. Examples of ICs consist of articles such as engine mounts; various electrical, hydraulic, and drain brackets; and environmental control system and anti-ice ducts, along with their associated hardware.

This proposal would also permit a PC holder to manufacture and install ICs onto its products. Although this proposal would revise § 21.147 to allow a PC holder for a product to receive an amendment to its production limitation record (PLR) to permit the manufacture and installation of ICs, the FAA notes that the holder of design data identifying the IC installed on the PC holder's product under the privileges of § 21.147(c) retains all of the continuing airworthiness responsibilities for the IC. If the PC holder is not the owner of the IC design or installation data, the PC holder has no authority to amend the design or installation data of the IC. All changes to the design or installation data would be made by the design approval holder. The PC holder would be responsible for all issues related to quality, manufacturing, and installation of the IC by the PC holder.

A PLR is issued as part of a PC. Current § 21.142 states that a PLR lists the TC number and the model of every product that the PC holder is authorized to manufacture. The PLR does not provide for the listing of ICs. This proposal would therefore revise § 21.142 to specify that the PLR would also identify every IC that the PC holder is authorized to manufacture and install.

The TC holder would work with the PC holder to identify ICs. Once identified, the PC holder would apply for an amendment of its PLR.

The FAA would develop guidance for PC holders and TC holders to comply with any conditions and limitations necessary for the individual PC holder in order to exercise this privilege. Section 21.147(c) would not place a requirement that all ICs manufactured by a PC holder be installed prior to shipping. Having these items listed on the PLR would allow a PC holder to both ship the ICs loose with its product or individually as spares.

The intent of this proposal is to enhance safety and facilitate global manufacturing. With this proposed rule change, product customers may no longer need to partially disassemble a supplied product, thereby decreasing potential installation errors. The FAA acknowledges that the benefits of streamlining manufacturing and eliminating duplicative processes may reduce costs.

C. Supplier Control

The aviation business model has significantly evolved in recent decades. Production approval holders are increasingly using suppliers to supplement their activities. Many PAHs no longer manufacture complete products or articles, but rather assemble aircraft systems and components produced by their suppliers into a complete product or article.

As the aviation business model has changed, first-tier suppliers have functioned more as integrators of major sub-assemblies (such as wings, nose sections, and complete fuselage sections) than as manufactures of smaller assemblies or parts (such as altimeters, brake assemblies, and build-to-print parts). Accordingly, the manufacture of articles and assemblies has been shifted further down the supply chain.

Another result of the change in the aviation business model is the increased use of suppliers located in countries outside the U.S. The demands of customers and the economy have caused production to move outside the U.S. to accommodate agreements and utilize low-cost labor. The FAA seeks to clarify its regulations to reflect the modern manufacturing environment and to reinforce that it is a PAH's responsibility to ensure that its requirements are communicated throughout its supply chain.

The term 'supplier' is mentioned throughout 14 CFR part 21, and the term is commonly used within industry. However, there is no definition of supplier in the current regulations. This proposal would define the term supplier in proposed § 21.1(b) as a person that provides a product, article, or service at any tier of the supply chain that is used or consumed in the design or manufacture of, or installed on, the product or article. Industry has requested that the FAA provide a definition of the term 'supplier' to clarify those entities the FAA recognizes as suppliers. Defining supplier should provide PAHs with a clear understanding of the term and, therefore, better ensure regulatory compliance.

Currently, § 21.137(c)(1) requires a PAH to have procedures that ensure each supplier-furnished product or article conforms to its approved design. This proposal would specify that a supplier must comply with a PAH's requirements. The FAA recognizes that many supplier-furnished products do not, in fact, conform to an approved design when provided to a PAH, and that a supplier may also provide a PAH

with a service. This proposal would allow a PAH to accept products, articles, or services from its suppliers that do not meet the approved design, yet conform to the PAH's requirements.

Current industry practice is for a PAH to submit a purchase order to a supplier with the PAH's specific requirements outlined for manufacturing a product or article, or for providing a service. In many cases, a PAH does not require a supplier to provide a product, article, or service that conforms to the approved design requirements for the finished product or article. For example, the design data for a skin section of an aircraft may show the final rivet hole dimension, but a PAH will require a supplier to provide pilot holes of a smaller diameter. The final diameter of the holes will be achieved during assembly when the skin is joined to the aircraft.

Another example is when a PAH contracts for a machined part that requires additional processing that the supplier is not capable of performing, such as heat treating or plating. In such a case, a PAH's contract would reflect that it wants the article to conform to the design data without the additional processing. A PAH would then need to contract with another supplier for these processes.

In addition, this proposal would require a PAH to establish a supplier-reporting process for products, articles, or services that have been released from a supplier and subsequently found not to conform (hereafter referred to as a quality escape) to the PAH's requirements. Currently, § 21.137(c)(2) requires each supplier, at any tier, to report to the PAH if there has been a quality escape. Except for first-tier suppliers who report directly to the PAH, this section does not require suppliers within the supply chain to report to the next higher tier if there has been a quality escape. This proposal would require the PAH to define and establish, as part of its quality system, a process for supplier-reporting of quality escapes. This process should ensure that those individuals who need to know when a quality escape has occurred be informed in a timely manner.

The FAA determined it was necessary to clarify § 21.137(c)(2) because it currently requires each supplier to report to the PAH if a product or article has been released from that supplier and subsequently found not to conform to the applicable design data. The FAA recognizes that such a requirement can impose a significant burden on PAHs. Although the FAA has proposed to include a definition of the term 'supplier' that would include all suppliers within the supply chain, the proposal would provide PAHs with the ability to develop procedures to identify those suppliers that would be required to report quality escapes and to whom they must report. Such procedures would not necessarily require all suppliers within the supply chain to make such reports to the PAH. The proposal would permit PAHs to establish a means of supplier reporting that is more appropriate to its particular production process. These procedures would be required to be approved as part of the PAH's quality system.

To comply with proposed § 21.137(c)(2), the FAA expects the PAH's quality system to specify which suppliers must report, and to whom, when, and how those reports must be provided. In some cases, the PAH would want the supplier of certain products, articles, or services to report a quality escape to both its immediate customer and directly to the PAH. This reporting could continue up through the supply chain to the tier where the quality escape has been resolved. A PAH could communicate its quality escape reporting requirement as a flow-through requirement to its first-tier suppliers and subsequently through the supply chain on a purchase order (or equivalent) document.

D. Authorized Release Documents for Aircraft Engines, Propellers, and Articles

An airworthiness approval is a document issued by the FAA for an aircraft, aircraft engine, propeller, or article which certifies that the aircraft, aircraft engine, propeller, or article conforms to its approved design and is in a condition for safe operation. This proposal would revise the definition of airworthiness approval in § 21.1(b) to indicate that an airworthiness approval document may also be issued for an aircraft, aircraft engine, propeller, or article when those products or articles may not necessarily conform to their approved designs. Accordingly, the FAA has added the phrase ''unless otherwise specified'' because under part 21, subpart L, for example, export airworthiness approvals can be issued for aircraft, aircraft engines, propellers, and articles that do not conform to their approved designs when such discrepancies are made known to, and accepted by, the importing country or jurisdiction.

The FAA believes a PAH should be permitted to issue authorized release documents since the PAH is responsible for ensuring the airworthiness of each product and article it manufactures. This proposal would amend § 21.137 by adding a new paragraph (o) to allow PAHs to issue authorized release documents for new aircraft engines, propellers, and articles; and for used aircraft engines, propellers, and articles when rebuilt or altered in accordance with § 43.3(j).

Production approval holders that intend to issue these documents must include procedures in their quality systems that provide for the selection, appointment, training, recordation, removal, and management of the individuals authorized by the PAH to issue authorized release documents. The intent of this proposed requirement is to ensure that only qualified personnel issue these documents. An evaluation of these individuals' qualifications would need to include an assessment of their knowledge, background, experience, and training. Qualifications should be commensurate with the complexity and type of product or article for which the PAH issues the authorized release documents. When an authorized release document is being used for the purpose of export, the production approval holder would be required to comply with the procedures applicable to the export of new and used aircraft engines, propellers, and articles specified in § 21.331 and the responsibilities of exporters specified in § 21.335 of this part.

Including procedures in a PAH's quality system is a conditional requirement that only applies to a PAH that wants to issue an authorized release document. Production approval holders not issuing these documents can continue to obtain approvals from the FAA. The FAA plans to place guidance regarding the qualifications of the individuals allowed to issue an authorized release document in guidance material if this proposal is adopted. This proposal is modeled after the European Commission Regulation (EU) No. 748/2012, Annex I, Part 21, Certification of Aircraft and Related Products, Parts, and Appliances, and of Design and Production Organizations.

The intent of this proposal is to recognize a practice permitted by other authorities and give PAHs in the U.S. the same flexibility and responsiveness available to their European and Canadian manufacturing counterparts who already issue authorized release documents. The proposed changes would harmonize the CFR with regulations of foreign civil aviation authorities and facilitate the global movement and acceptance of aircraft engines, propellers, and articles.

All airworthiness certificates would continue to be issued by the FAA.

Production approval holders would not be permitted to issue airworthiness certificates under the provisions of this proposal.

E. Marking of Wooden Propellers

Currently, § 45.11(c) requires each person who produces a propeller, propeller blade, or propeller hub under a TC or PC to mark each product or part using an approved fireproof method. The regulation does not take into account the inherent difficulty of marking a wooden propeller with a fireproof method. Under this proposal, § 45.11(c) would continue to require a fixed-pitch wooden propeller to be marked; however, the marking would no longer be required to be fireproof. This relief is not necessary for variable-pitch wooden propellers, as they are constructed with a metal hub which can be marked with a fireproof method.

In 2000, 2003, and 2008, the FAA granted Exemptions Nos. 7559, 8394, and 9800 (and an extension with an amendment to Exemption No. 9800 in 2013) to Sensenich Wood Propeller Company, Inc. (''Sensenich''). These exemptions permitted Sensenich to place the required identification marking directly on the hub of a wooden propeller instead of attaching a metal tag with that information. (Copies of these exemptions are included in the docket.) In its petition for exemption, Sensenich reported that in accidents involving damage to wooden propellers, the hub remains intact, thus preserving the stamped identification. The FAA also noted that because of the flammability properties of a solid wooden propeller, mounting a metal tag may be the only way to provide a fireproof identification that will not likely be lost or destroyed in an accident.

The FAA further noted the possible safety risks inherent in attaching a metal tag. Attaching a metal tag could: (1) Affect the environmental resistance of a wooden propeller because the screws would break the moisture seal, which would increase the potential for cracking and deterioration of the wooden propeller; (2) increase the difficulty in attaining propeller balance; and (3) become ineffective because the metal tag could become loose and fall off, leaving the propeller with no identification. Therefore, in granting the exemption, the FAA found that stamping the hub of the propeller with the identification marks would achieve a level of safety equivalent to that of the rule. Stamping has been the industry's standard for marking wooden propellers. Additionally, the FAA recognizes that engravings and etchings are acceptable methods for marking identification.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows.

Discussion of Costs and Benefits

Overview of Costs and Benefits of This Proposed Rule

Provision	Costs/benefits
Require Identification of Accountable Manager	Minimal costs—requires identification of an existing manager who would be responsible for, and have authority over, a PAH's operations, and who would serve as a PAH's primary contact with the FAA.
Allow PC Holders to Manufacture and Install Interface Components	Codifying the practice, currently allowed by exemption, would reduce regulatory compliance costs.
Clarify Supplier Control Requirements	No additional cost. Proposal clarifies existing requirements that PAHs are responsible for conformity throughout their supply chains and gives PAHs flexibility in establishing a supplier-reporting process for nonconforming releases.
Allow PAHs to Issue Authorized Release Documents for Aircraft Engines, Propellers and Articles.	Voluntary, so inherently cost-beneficial.
Exclude Fixed-Pitch Wooden Propellers from Fireproof Marking Requirements.	The FAA found the exemption provides an equivalent level of safety. Codifying the practice currently allowed by exemption would reduce regulatory compliance costs.

Who is potentially affected by this proposed rule?

Production approval holders (PAHs) and TC (type certificate) holders are potentially affected.

Costs and Benefits of This Proposed Rule

1. Require Identification of an Accountable Manager

Under this proposal, the FAA would require each applicant for, or holder of, a Production Certificate (PC), PMA (Parts Manufacturer Approval), or TSO (Technical Standard Order) authorization to identify an accountable manager, who would be responsible for, and have authority over, a PAH's operations, and who would serve as a

PAH's primary contact with the FAA. This proposal is not intended to require the PAH to create a new position within its organization and would not mandate that an individual in a specific position be identified as the accountable manager. Consequently, the costs, if any, associated with this requirement are minimal.

2. Allow Production Certificate Holders To Manufacture and Install Interface Components

PC holders currently cannot install interface components (ICs) on their type-certificated products without an exemption. Current regulations governing the production limitation record and the amendment of PCs restrict the PC holder to the manufacture of products only (aircraft, aircraft engines, or propellers) and do not authorize installation.[1] The FAA has granted exemptions to engine manufacturers, allowing them to manufacture and install airframe components that interface between the engine and the airframe provided they own or are licensed to use the IC type design and installation data. In granting these exemptions, the FAA found that allowing engine manufacturers to produce and install ICs improved safety and efficiency by eliminating disassembly, reassembly and retesting, as well as related scoring of fatigue sensitive parts; damage to critical parts; and air/fuel/oil leaks.[2]

This provision would codify the practice, currently allowed by exemption, of allowing PC holders to manufacture and install ICs, and would apply to any articles designated by the TC holder that interface between products, therefore including the interface between propeller and aircraft engine and between propeller and aircraft, as well as between aircraft engine and aircraft. Codifying the practice of allowing PC holders to manufacture and install ICs implies no change in safety or efficiency benefits already implied by the practice. Codifying the practice, however, would reduce regulatory costs since paperwork requirements involved in periodic application for and granting of exemptions would be eliminated.

3. Supplier Control

With this proposal the FAA intends to clarify existing requirements that the PAH is responsible for (1) conformity throughout the supply chain and (2) establishing a supplier reporting process for nonconforming releases. As there is no definition of supplier in the current regulations, the proposed rule would define supplier as ''a person that provides a product, article, or service at any tier in the supply chain that is used or consumed in the design or manufacture of, or installed on, a product or article.''

The proposed rule would change the language to § 21.137(c) as shown in the following table:

Current language	Proposed language
Supplier Control. Procedures that— (1) Ensure that each supplier-furnished product or article conforms to its approved design; and (2) Require each supplier to report to the production approval holder if a product or article has been released from that supplier and subsequently found not to conform to the applicable design data.	Supplier Control. Procedures that— (1) Ensure that each supplier-provided product, article, or service conforms to the production approval holder's requirements; and (2) Establish a supplier-reporting process for products, articles, or services that have been released from the supplier and subsequently found not to conform to the production approval holder's requirements.

As provision (1) just clarifies the FAA's intent, while provision (2) gives the PAHs greater flexibility, any additional costs would be minimal.

4. Allow Production Approval Holders To Issue Authorized Release Documents for Aircraft Engines, Propellers, and Articles

This proposal would allow, but not require, PAHs to issue authorized release documents using FAA Form 8130–3, ''Authorized Release Certificate,'' for aircraft engines, propellers, and articles for which the PAH has a production approval. FAA Form 8130–3 is the preferred method for issuing an export airworthiness approval documenting that an aircraft engine, propeller, or article conforms to its approved design and is in a condition for safe operation. PAHs choosing not to issue these authorized release documents would continue to obtain approvals from the FAA. For aircraft, an export airworthiness approval would continue to be issued only by the FAA, using Form 8130–4, ''Export Certificate of Airworthiness.''

Although export airworthiness approvals are required only when requested by a foreign civil aviation authority, they have become increasingly valued in the aviation industry. Several U.S. manufacturers have requested the privilege of issuing authorized release documents, which is already enjoyed by their European and Canadian counterparts. As issuance of authorized release documents is voluntary, this provision would be inherently cost beneficial.

5. Marking of Fixed-Pitch Wooden Propellers

As noted in the preamble above, the FAA granted an exemption to Sensenich Wood Propeller Company from the regulations requiring that a propeller, propeller blade, or propeller hub be marked using an approved fireproof method. In granting the exemption, the FAA found that stamping the hub of the propeller with the identification marks would achieve a level of safety equivalent to the rule. The FAA maintains that finding in this proposal and, in any case, codifying the practice, currently allowed by exemption, implies no change in safety benefits.[3] Codifying the practice, however, would reduce regulatory compliance costs since the costs of fireproof stamping and the costs of paperwork requirements involved in periodic application for and granting of the exemption would be eliminated.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that

[1] These regulations were § 21.151 (production limitation record) and § 21.153 (amendments of production certificates) before the 2010 changes in the part 21 rule and § 21.142 and § 21.147 in 2012, after the 2010 changes.

[2] The production and installation of ICs by engine manufacturers also increase efficiency by allowing delivery of quick-change replacement engines to end users such as air carriers and charter operators. Some piece parts (or kits), such as the engine buildup unit (EBU), rather than being installed by the PC holder may be shipped separately to an aircraft manufacturer for the purpose of just-in-time manufacturing operations, or to an airline that may want kits on hand for routine maintenance operations or to replace hardware damaged during operations.

[3] Since variable-pitch wooden propellers have metal hubs, a metal tag is not necessary.

agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The provisions of this proposed rule (1) are minimal cost, (2) would impose no additional costs because the provisions would clarify only or are current practice, or (3) are voluntary and therefore inherently cost-beneficial.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination. Specifically, the FAA requests comments on whether the proposed rule creates any specific compliance costs unique to small entities. Please provide detailed economic analysis to support any cost claims. The FAA also invites comments regarding other small-entity concerns with respect to the proposed rule.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that the rule's provision allowing PAHs to issue authorized release documents would be in accord with the Trade Agreements Act as this provision uses European standards as the basis for United States regulation. The remaining provisions have a minimal domestic impact only and therefore no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 12866

See the ''Regulatory Evaluation'' discussion in the ''Regulatory Notices and Analyses'' section elsewhere in this preamble.

B. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR Part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 21

Amendment of production certificates, Issuance of export airworthiness approvals for aircraft engines, propellers, and articles, Organization and Quality system.

14 CFR Part 45

Marking of products.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of Title 14, Code of Federal Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

■ 1. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

■ 2. Amend § 21.1 by revising paragraph (b)(1), redesignating paragraphs (b)(5) through (8) as (b)(6) through (9), and adding new paragraph (b)(5) and paragraph (b)(10) to read as follows:

§ 21.1 Applicability and definitions.

* * * * *

(b) * * *

(1) *Airworthiness approval* means a document issued by the FAA for an aircraft, aircraft engine, propeller, or article which certifies that the aircraft, aircraft engine, propeller, or article conforms to its approved design, unless otherwise specified, and is in a condition for safe operation.

* * * * *

(5) *Interface component* means an article that serves as a functional interface between an aircraft and an aircraft engine, an aircraft engine and a propeller, or an aircraft and a propeller. An interface component is designated by the holder of the type certificate or the supplemental type certificate who controls the approved design data for that article.

* * * * *

(10) *Supplier* means a person that provides a product, article, or service at any tier in the supply chain that is used or consumed in the design or manufacture of, or installed on a product or article.

■ 3. Revise § 21.135 to read as follows:

§ 21.135 Organization.

(a) Each applicant for or holder of a production certificate must provide the FAA with a document describing how its organization will ensure compliance with the provisions of this subpart. In addition, the document must identify an accountable manager and describe assigned responsibilities, delegated authorities, and the functional relationship of those responsible for quality to management and other organizational components.

(b) The accountable manager specified in paragraph (a) of this section is responsible for, and has the authority over, all production operations that are conducted under this part. The production approval holder must ensure that the accountable manager confirms the procedures described in the quality manual are in place and the requirements of the applicable regulations are met. The accountable manager serves as the primary contact with the FAA.

■ 4. Amend § 21.137, by revising paragraphs (c)(1) and (2) and adding paragraph (o) to read as follows:

§ 21.137 Quality system.

* * * * *

(c) * * *

(1) Ensure that each supplier-provided product, article, or service conforms to the production approval holder's requirements; and

(2) Establish a supplier-reporting process for products, articles, or services that have been released from or provided by the supplier and subsequently found not to conform to the production approval holder's requirements.

* * * * *

(o) *Issuing authorized release documents.* Procedures for issuing authorized release documents for aircraft engines, propellers, and articles

if the production approval holder intends to issue those documents. These procedures must provide for the selection, appointment, training, management, and removal of individuals authorized by the production approval holder to issue authorized release documents. These documents may be issued for new aircraft engines, propellers, and articles; and for used aircraft engines, propellers, and articles when rebuilt, or altered, in accordance with § 43.3(j) of this chapter. When an authorized release document is being used for the purpose of export, the production approval holder must comply with the procedures applicable to the export of new and used aircraft engines, propellers, and articles specified in § 21.331 and the responsibilities of exporters specified in § 21.335 of this part.

■ 5. Revise § 21.142 to read as follows:

§ 21.142 Production limitation record.

The FAA issues a production limitation record as part of a production certificate. The record lists the type certificate number and model of every product that the production certificate holder is authorized to manufacture, and identifies every interface component that the production certificate holder is authorized to manufacture and install.

■ 6. Revise § 21.147 to read as follows:

§ 21.147 Amendment of production certificates.

(a) The holder of a production certificate must apply for an amendment to a production certificate in a form and manner prescribed by the FAA.

(b) The applicant for an amendment to a production certificate to add a type certificate or model, or both, must comply with the applicable requirements of §§ 21.137, 21.138, and 21.150.

(c) The applicant for an amendment to a production certificate may have its production limitation record amended to allow the manufacture and installation of an interface component, provided—

(1) The design and installation data for the interface component is owned by, or licensed to, the applicant and made available to the FAA upon request;

(2) The interface component is manufactured by the applicant;

(3) The applicant's product conforms to its approved type design and the interface component conforms to its approved type design data;

(4) The assembled product with the installed interface component is in a condition for safe operation; and

(5) The applicant complies with any other conditions and limitations the FAA considers necessary.

■ 7. Revise § 21.305 to read as follows:

§ 21.305 Organization.

(a) Each applicant for or holder of a PMA must provide the FAA with a document describing how its organization will ensure compliance with the provisions of this subpart. In addition, the document must identify an accountable manager and describe assigned responsibilities, delegated authorities, and the functional relationship of those responsible for quality to management and other organizational components.

(b) The accountable manager specified in paragraph (a) of this section is responsible for, and has the authority over, all production operations that are conducted under this part. The production approval holder must ensure that the accountable manager confirms the procedures described in the quality manual are in place and the requirements of the applicable regulations are met. The accountable manager serves as the primary contact with the FAA.

■ 8. Revise § 21.605 to read as follows:

§ 21.605 Organization.

(a) Each applicant for or holder of a TSO authorization must provide the FAA with a document describing how its organization will ensure compliance with the provisions of this subpart. In addition, the document must identify an accountable manager and describe assigned responsibilities, delegated authorities, and the functional relationship of those responsible for quality to management and other organizational components.

(b) The accountable manager specified in paragraph (a) of this section is responsible for, and has the authority over, all production operations that are conducted under this part. The production approval holder must ensure that the accountable manager confirms the procedures described in the quality manual are in place and the requirements of the applicable regulations are met. The accountable manager serves as the primary contact with the FAA.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

■ 9. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113–40114, 44101–44105, 44107–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

■ 10. Amend § 45.11 by revising paragraph (c) introductory text to read as follows:

§ 45.11 Marking of products.

* * * * *

(c) *Propellers and propeller blades and hubs.* Each person who produces a propeller, propeller blade, or propeller hub under a type certificate or production certificate must mark each product or part. Except for a fixed-pitch wooden propeller, the marking must be accomplished using an approved fireproof method. The marking must—

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on January 23, 2014.

Frank P. Paskiewicz,

Deputy Director, Aircraft Certification Service.

[FR Doc. 2014–04330 Filed 2–26–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0059; Directorate Identifier 2013–NM–075–AD]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2012–07–08, for all Embraer S.A. Model ERJ 170 airplanes. AD 2012–07–08 currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new structural inspection requirements. Since we issued AD 2012–07–08, we have determined that more restrictive maintenance requirements and airworthiness limitations are necessary. This proposed AD would require revising the maintenance or inspection program to incorporate new inspections. We are proposing this AD to detect and correct fatigue cracking of structural components, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by April 14, 2014.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0059; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2180; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0059; Directorate Identifier 2013–NM–075–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On March 29, 2012, we issued AD 2012–07–08, Amendment 39–17014 (77 FR 24342, April 24, 2012). AD 2012–07–08 requires actions intended to address an unsafe condition on all EMBRAER S.A. Model ERJ 170 airplanes. (AD 2012–07–08 superseded AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010)).

Since we issued AD 2012–07–08, Amendment 39–17014 (77 FR 24342, April 24, 2012), the Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2012–10–01, effective October 29, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This [Brazilian] AD results from a new revision to the Airworthiness Limitations Section (ALS) of Embraer ERJ 170 Maintenance Review Board Report (MRBR 1621), to include new or modification of the current tasks and its respective thresholds and intervals. Failure to inspect these structural components, according to the new or revised tasks, thresholds and intervals, could prevent a timely detection of fatigue cracking. These cracks, if not properly addressed, could adversely affect the structural integrity of the airplane.

The required action is revising the maintenance or inspection program to incorporate new structural inspection requirements. You may examine the MCAI in the AD docket on the Internet at *http://regulations.gov* by searching for and locating it in Docket No. FAA–2014–0059.

Relevant Service Information

EMBRAER has issued Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 Maintenance Review Board MRB–1621, Revision 8, dated August 20, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

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

This proposed AD would retain only certain paragraphs from AD 2012–07–08, Amendment 39–17014 (77 FR 24342, April 24, 2012). Because all of the paragraphs in AD 2012–07–08 are not included in this proposed AD, the organization of the retained paragraphs was changed.

Costs of Compliance

We estimate that this proposed AD affects 171 products of U.S. registry.

The actions that are required by AD 2012–07–08, Amendment 39–17014 (77 FR 24342, April 24, 2012), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2012–07–08 is $85 per product.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $14,535, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2012–07–08, Amendment 39–17014 (77 FR 24342, April 24, 2012), and adding the following new AD:

Embraer S.A.: Docket No. FAA–2014–0059; Directorate Identifier 2013–NM–075–AD.

(a) Comments Due Date

We must receive comments by April 14, 2014.

(b) Affected ADs

This AD supersedes AD 2012–07–08, Amendment 39–17014 (77 FR 24342, April 24, 2012).

(c) Applicability

This AD applies to Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors; Code 53, Fuselage; Code 54, Nacelles/Pylons; Code 55 Stabilizers; Code 57, Wings; Code 71 Powerplant; and Code 78, Exhaust.

(e) Reason

This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to detect and correct fatigue cracking of structural components, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance Program Revision

This paragraph restates the action required by paragraph (i) of AD 2012–07–08, Amendment 39–17014 (77 FR 24342, April 24, 2012).

(1) Within 60 days after May 29, 2012 (the effective date of AD 2012–07–08, Amendment 39–17014 (77 FR 24342, April 24, 2012)): Revise the maintenance program to incorporate the new or revised tasks specified in Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR, MRB–1621, Revision 7, dated November 11, 2010; and EMBRAER Temporary Revision (TR) 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR, MRB–1621, Revision 7; with the initial compliance times and intervals specified in these documents.

(2) The initial compliance times for the tasks start from the date of issuance of the original Brazilian airworthiness certificate or the date of issuance of the original Brazilian export certificate of airworthiness of the applicable airplane at the applicable time specified in the tasks, or within 600 flight cycles after revising the maintenance program, whichever occurs later. For certain tasks, the compliance times depend on the pre-modification and post-modification status of the actions specified in the associated service bulletin, as specified in the ''Applicability'' column of Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR, MRB–1621, Revision 7, dated November 11, 2010; and EMBRAER Temporary Revision 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR, MRB–1621, Revision 7.

(h) Retained No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

This paragraph restates the actions required by paragraph (j) of AD 2012–07–08, Amendment 39–17014 (77 FR 24342, April 24, 2012). After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used other than those specified in Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR, MRB–1621, Revision 7, dated November 11, 2010; and EMBRAER Temporary Revision 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR, MRB–1621, Revision 7; unless the actions or intervals are approved as an alternative method of compliance (AMOC), in accordance with the procedures specified in paragraph (k)(1) of this AD, except as required by paragraph (i) of this AD.

(i) New Revision of Maintenance or Inspection Program

Within 60 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 Maintenance Review Board Report, MRB–1621, Revision 8, dated August 20, 2012. The initial compliance times for the tasks are at the applicable times specified in Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 Maintenance Review Board Report, MRB–1621, Revision 8, dated August 20, 2012, or within 60 days after the effective date of this AD, whichever occurs later. Accomplishing the requirements of this paragraph terminates the requirements of paragraph (g) of this AD.

(j) No Alternative Actions or Intervals

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

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Kathrine Rask, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2180; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the Design Approval Holder with a State of Design Authority's design organization approval), as applicable. You are required to ensure the product is airworthy before it is returned to service.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information Brazilian Airworthiness Directive 2012–10–01, effective October 29, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0059.

(2) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04256 Filed 2–26–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0061; Directorate Identifier 2013–NM–029–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2007–06–12, that applies to certain Airbus Model A330–200 and A330–300 airplanes. AD 2007–06–12 requires, for certain airplanes, reinforcement of the structure of the center fuselage by installing external stiffeners (butt straps) at frame (FR) 53.3 on the fuselage skin between left-hand (LH) and right-hand (RH) stringer (STR) 13, and related investigative and corrective actions. Since we issued AD 2007–06–12, we have determined that the compliance times must be reduced in order to address the unsafe condition. This proposed AD would reduce the compliance times for reinforcing the structure of the center fuselage at FR 53.3. We are proposing this AD to prevent fatigue cracking of the fuselage, which could result in reduced structural integrity of the fuselage.

DATES: We must receive comments on this proposed AD by April 14, 2014.

ADDRESSES: You may send comments by any of the following methods:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0061; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0061; Directorate Identifier 2013–NM–029–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On March 7, 2007, we issued AD 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007) (''AD 2007–06–12''). AD 2007–06–12 requires actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007), we have determined that the compliance times must be reduced in order to address the unsafe condition. We have also added the

compliance time for short- and long-range airplane utilization based on the new fatigue and damage tolerance evaluation. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0016, dated January 16, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During the fatigue tests (EF2) of the Airbus A330 test fuselage, initiation and development of cracks were evidenced at the circumferential joint of frame 53.3.

This condition, if not corrected, could lead to a reduction in the structural integrity of the fuselage.

EASA issued AD 2006–0266 [(*http://ad.easa.europa.eu/blob/easa_ad_2006_0266_Superseded.pdf/AD_2006–0266_1*), which corresponds to FAA AD 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007)], which took over the requirements of Direction Générale de L'aviation Civile [DGAC] France AD F–2003–415 for A330–300 pre-mod 41652S11819, and required reinforcement of the circumferential joint of frame 53.3 by application of Airbus Service Bulletin (SB) A330–53–3143 on A330–300 post modification 41652S11819 and pre-mod 49202, and all A330–200 pre-mod 49202 in order to improve the fatigue life.

Since that [EASA] AD was issued, in the frame of a new fatigue and damage tolerance evaluation taking into account the aeroplane utilisation, the thresholds for the reinforcement were reassessed and the conclusion is that some thresholds must be reduced.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2006–0266, which is superseded, and requires reinforcement of structure of the centre fuselage at the upper circumferential joint of frame 53.3 within the new thresholds.

The initial compliance times range between 15,700 total flight cycles or 94,600 total flight hours, whichever occurs first; and 25,600 total flight cycles or 77,000 total flight hours, whichever occurs first; depending on airplane configuration. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0061.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–53–3127 Revision 02, including Appendix 01, dated December 7, 2011, and Mandatory Service Bulletin A330–53–3143 Revision 05, including Appendix 01, dated May 29, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Repair Approvals

In many FAA transport ADs, when the service information specifies to contact the manufacturer for further instructions if certain discrepancies are found, we typically include in the AD a requirement to accomplish the action using a method approved by either the FAA or the State of Design Authority (or its delegated agent).

We have recently been notified that certain laws in other countries do not allow such delegation of authority, but some countries do recognize design approval organizations. In addition, we have become aware that some U.S. operators have used repair instructions that were previously approved by a State of Design Authority or a Design Approval Holder (DAH) as a method of compliance with this provision in FAA ADs. Frequently, in these cases, the previously approved repair instructions come from the airplane structural repair manual or the DAH repair approval statements that were not specifically developed to address the unsafe condition corrected by the AD. Using repair instructions that were not specifically approved for a particular AD creates the potential for doing repairs that were not developed to address the unsafe condition identified by the MCAI AD, the FAA AD, or the applicable service information, which could result in the unsafe condition not being fully corrected.

To prevent the use of repairs that were not specifically developed to correct the unsafe condition, certain requirements of this proposed AD would require that the repair approval specifically refer to the FAA AD. This change is intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we use the phrase ''its delegated agent, or the DAH with State of Design Authority design organization approval, as applicable'' in this proposed AD to refer to a DAH authorized to approve certain required repairs for this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 9 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	Up to 327 work-hour × $85 per hour = $27,795	$17,850	Up to $45,645	Up to $410,805.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This

proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007), and adding the following new AD:

Airbus: Docket No. FAA–2014–0061; Directorate Identifier 2013–NM–029–AD.

(a) Comments Due Date

We must receive comments by April 14, 2014.

(b) Affected ADs

This AD supersedes AD 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007).

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, and –243 airplanes; and A330–301, –321, –322, –323, –341, –342, and –343 airplanes, certificated in any category, except those on which Airbus modification 49202 has been embodied in production.

(d) Subject

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

(e) Reason

This AD was prompted by a new fatigue and damage tolerance evaluation that concluded the compliance time for an existing reinforcement of the fuselage has to be reduced. We are issuing this AD to prevent fatigue cracking of the fuselage, which could result in reduced structural integrity of the fuselage.

(f) Compliance

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

(g) Installation for Model A330–300 Series Airplanes

For Airbus Model A330–301, A330–321, A330–322, A330–323, A330–341, A330–342, and A330–343 airplanes, except those on which Airbus modification 41652S11819 has been incorporated in production: At the time specified in paragraph (g)(1) or (g)(2) of this AD, whichever occurs later, install butt straps at FR53.3 on the fuselage skin between left-hand (LH) and right-hand (RH) stringer (STR) 13, and do all related investigative and corrective actions before further flight. Except as provided by paragraph (h) of this AD, do all actions in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–53–3127, Revision 02, including Appendix 01, dated December 7, 2011.

(1) At the applicable time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) Airplanes with a short-range mission as specified in Airbus Mandatory Service Bulletin A330–53–3127, Revision 02, dated December 7, 2011: Within 15,300 flight cycles or 46,100 flight hours, whichever occurs first, after the first flight of the airplane.

(ii) Airplanes with a long-range mission as specified in Airbus Mandatory Service Bulletin A330–53–3127, Revision 02, dated December 7, 2011: Within 13,200 flight cycles or 79,300 flight hours, whichever occurs first after the first flight of the airplane.

(2) Within 24 months after the effective date of this AD, but not to exceed 14,700 total flight cycles or 51,400 total flight hours, whichever occurs earlier.

(h) Corrective Actions

For Airbus Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes, except those on which Airbus Modification 41652S11819 has been incorporated in production: If any crack is detected during the related investigative actions (rototest) required by paragraph (g) of this AD, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent, or by the Design Approval Holder (DAH) with EASA design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD.

(i) Installation for Model A330–200 and –300 Series Airplanes

For airplanes specified in paragraph (c) of this AD on which Airbus modification 41652S11819 has been embodied in production: At the time specified in paragraph (i)(1) or (i)(2) of this AD, whichever occurs later, install butt straps at FR53.3 on the fuselage skin between LH and RH STR13; and do all related investigative and other specified actions before further flight, as applicable. Do all actions in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–53–3143, Revision 05, dated May 29, 2012, including Appendix 1; except, if any crack is detected during a related investigative action (rototest), before further flight, repair the crack using a method approved by the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent, or by the Design Approval Holder (DAH) with EASA design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD.

(1) At the applicable times specified in the ''threshold'' column of the table in 1.E. ''Compliance'' of Airbus Mandatory Service Bulletin A330–53–3143, Revision 05, dated May 29, 2012. Where paragraph 1.E. ''Compliance'' of Airbus Mandatory Service Bulletin A330 53–3143, Revision 05, dated May 29, 2012, specifies a time in the ''threshold'' column, this AD requires compliance within the corresponding times after the first flight of the airplane.

(2) Within 24 months after the effective date of this AD, but not to exceed 17,600 total flight cycles or 61,600 total flight hours, whichever occurs earlier.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraphs (g) of this AD if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–53–3127, Revision 01, including Appendix 01, dated November 21, 2003 (which is not incorporated by reference in this AD).

(2) This paragraph provides credit for actions required by paragraph (i) of this AD if those actions were performed before the effective date of this AD using any service information specified in paragraphs (j)(2)(i) through (j)(2)(v) of this AD; this service information is not incorporated by reference in this AD.

(i) Airbus Mandatory Service Bulletin A330–53–3143, including Appendix 01, dated December 24, 2004.

(ii) Airbus Mandatory Service Bulletin A330–53–3143, Revision 01, including Appendix 01, dated June 29, 2006.

(iii) Airbus Mandatory Service Bulletin A330–53–3143, Revision 02, including Appendix 01, dated August 31, 2010.

(iv) Airbus Mandatory Service Bulletin A330–53–3143, Revision 03, including Appendix 01, dated March 3, 2011.

(v) Airbus Mandatory Service Bulletin A330–53–3143, Revision 04, including Appendix 01, dated December 6, 2011.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International

Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously for AD 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007), are approved as AMOCs for the corresponding provisions of paragraph (i) of this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). You are required to ensure the product is airworthy before it is returned to service.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0016, dated January 16, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0061.

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

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

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04259 Filed 2–26–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0060; Directorate Identifier 2012–NM–194–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directives (AD) 2006–21–08, AD 2007–14–01, AD 2008–25–02, AD 2010–04–09, AD 2011–01–02, and AD 2012–16–05, for certain Airbus Model A330 and 340 series airplanes. AD 2006–21–08, AD 2007–14–01, AD 2008–25–02, AD 2010–04–09, AD 2011–01–02, and AD 2012–16–05 currently require revising the maintenance program or inspection program to incorporate certain maintenance requirements and airworthiness limitations for fuel tank systems. Since we issued AD 2006–21–08, AD 2007–14–01, AD 2008–25–02, AD 2010–04–09, AD 2011–01–02, and AD 2012–16–05, we have determined that more restrictive maintenance requirements and airworthiness limitations are necessary. This proposed AD would require a new maintenance or inspection program revision. We are proposing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 14, 2014.

ADDRESSES: You may send comments by any of the following methods:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0060; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0060; Directorate Identifier 2012–NM–194–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On October 10, 2006, we issued AD 2006–21–08, Amendment 39–14793 (71 FR 61639, October 19, 2006), for certain Airbus Model A330–200, A340–200, and A340–300 airplanes. AD 2006–21–08 requires installation of heat shields in the belly fairing of the center fuselage. AD 2006–21–08 resulted from fuel system reviews conducted by the

manufacturer. We issued AD 2006–21–08 to prevent exposing any fuel leaked from the center fuel tank to the hot temperature areas of the air conditioning packs, which could result in a fire and consequent fuel tank explosion.

On June 25, 2007, we issued AD 2007–14–01, Amendment 39–15123 (72 FR 38006, July 12, 2007), for all Airbus Model A330 and A340 airplanes. AD 2007–14–01 requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new limitations for fuel tank systems. AD 2007–14–01 resulted from fuel system reviews conducted by the manufacturer. We issued AD 2007–14–01 to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane.

On November 26, 2008, we issued AD 2008–25–02, Amendment 39–15760 (73 FR 75307, December 11, 2008), for all Airbus Model A330 airplanes, and Model A340–200 and A340–300 airplanes. AD 2008–25–02 requires inspecting P-clips in the wings, modifying the electrical bonding of the equipment installed in fuel tanks, and applying applicable corrective actions. AD 2008–25–02 resulted from fuel system reviews conducted by the manufacturer. We issued AD 2008–25–02 to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

On February 5, 2010, we issued AD 2010–04–09, Amendment 39–16202 (75 FR 7940, February 23, 2010; corrected March 3, 2010 (75 FR 9515)), for certain Airbus Model A330–200 series airplanes, and Model A340–200 and A340–300 series airplanes. AD 2010–04–09 requires the installation of plugs on the heat shield panels of the left-hand (LH) and right-hand (RH) air conditioning packs. AD 2010–04–09 resulted from the development of a repair solution by the manufacturer. We issued AD 2010–04–09 to prevent fuel from the center tank leaking through holes in the heat shield panels, which could cause vapor to develop into a potential source of ignition, possibly resulting in a fuel tank explosion and consequent loss of the airplane.

On December 17, 2010, we issued AD 2011–01–02, Amendment 39–16555 (76 FR 432, January 5, 2011), for certain Airbus Model A330–201, –202, –203, –223, and –243 airplanes; certain Airbus Model A330–300 series airplanes; and all Airbus Model A340–200 and –300 series airplanes. AD 2011–01–02 requires installing flight warning computer (FWC) software on both FWCs. AD 2011–01–02 resulted from fuel system reviews conducted by the manufacturer. We issued AD 2011–01–02 to prevent failure of the auxiliary power unit (APU) bleed leak detection system, which could result in overheat of the fuel tank located in the horizontal stabilizer and ignition of the fuel vapors in that tank and consequent loss of the airplane.

On July 31, 2012, we issued AD 2012–16–05, Amendment 39–17152 (77 FR 48425, August 14, 2012), for certain Airbus Model A330–200 and –200 freighter series airplanes; and Model A340–200, A340–300, A340–500, and A340–600 series airplanes. AD 2012–16–05 requires modification of the control circuit for the fuel pumps for the center fuel tanks for certain airplanes, and center and rear fuel tanks for certain other airplanes. AD 2012–16–05 resulted from fuel system reviews conducted by the manufacturer. We issued AD 2012–16–05 to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Actions Since Previously Described ADs Were Issued

Since we issued AD 2006–21–08, Amendment 39–14793 (71 FR 61639, October 19, 2006); AD 2007–14–01, Amendment 39–15123 (72 FR 38006, July 12, 2007); AD 2008–25–02, Amendment 39–15760 (73 FR 75307, December 11, 2008); AD 2010–04–09, Amendment 39–16202 (75 FR 7940, February 23, 2010; corrected March 3, 2010 (75 FR 9515)); AD 2011–01–02, Amendment 39–16555 (76 FR 432, January 5, 2011); and AD 2012–16–05, Amendment 39–17152 (77 FR 48425, August 14, 2012); we have determined that more restrictive maintenance requirements and airworthiness limitations are necessary.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0168, dated August 31, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Prompted by an accident [involving a fuel tank system explosion in flight] * * * the FAA published Special Federal Aviation Regulation (SFAR) 88 (66 FR 23086, May 7, 2001) and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12. The design review conducted Airbus to develop Fuel Airworthiness Limitations (FAL) for Airbus on A330 and A340 aeroplanes in response to these regulations.
>
> The FAL * * * have been approved by the European Aviation Safety Agency (EASA) * * * ALS Part 5.
>
> Failure to comply with items as identified in Airbus A330 and A340 ALS Part 5 could result in a fuel tank explosion and consequent loss of the aeroplane.
>
> To address this condition, EASA issued:
>
> EASA AD 2007–0023, dated January 25, 2007 (*http://ad.easa.europa.eu/ad/2007-0023*), which corresponds to FAA AD 2007–14–01, Amendment 39–15123 (72 FR 38006, July 12, 2007) to require compliance with FAL * * * (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for A330 aeroplanes, and
>
> EASA AD 2006–0205, dated July 11, 2006 (*http://ad.easa.europa.eu/ad/2006-0205*), which also corresponds to FAA AD 2007–14–01, Amendment 39–15123 (72 FR 38006, July 12, 2007) to require compliance with FAL * * * (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for Airbus A340 aeroplanes.
>
> All other EASA ADs * * * required accomplishment of aeroplane modifications related to Fuel Tank Safety items, the requirements and compliance times of which are now integrated into ALS Part 5.
>
> For the reasons described above this [EASA] AD * * * requires the implementation of the new or more restrictive maintenance requirements and/or airworthiness limitations as specified in the revision 00 of Airbus A340 ALS Part 5.

The unsafe condition is the potential of ignition sources inside fuel tanks. Such ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0060.

Relevant Service Information

Airbus has issued A330 ALS Part 5—Fuel Airworthiness Limitations, dated November 16, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Related Rulemaking

We have issued AD 2013–26–03, Amendment 39–17712 (78 FR 79292, December 30, 2013), for Airbus Model A340 airplanes to require revising the maintenance or inspection program to incorporate certain maintenance requirements and airworthiness limitations. AD 2013–26–03 terminates

the requirements of the following ADs for Model A340 airplanes only:

- AD 2006–21–08, Amendment 39–14793 (71 FR 61639, October 19, 2006);
- AD 2007–14–01, Amendment 39–15123 (72 FR 38006, July 12, 2007);
- AD 2008–25–02, Amendment 39–15760 (73 FR 75307, December 11, 2008);
- AD 2010–04–09, Amendment 39–16202 (75 FR 7940, February 23, 2010; corrected March 3, 2010 (75 FR 9515));
- AD 2011–01–02, Amendment 39–16555 (76 FR 432, January 5, 2011); and
- AD 2012–16–05, Amendment 39–17152 (77 FR 48425, August 14, 2012).

Because AD 2013–26–03, Amendment 39–17712 (78 FR 79292, December 30, 2013), terminates the requirements of the preceding ADs and requires new airworthiness limitations for Airbus Model A340 series airplanes, we have not included Airbus Model A340 series airplanes in the applicability of this proposed AD. This proposed AD applies only to the Airbus Model A330 series airplanes specified in paragraph (c) of this proposed AD.

FAA's Determination and Requirements of This Proposed AD

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

This proposed AD would retain none of the requirements of the ADs listed below, because those requirements are now contained in Airbus A330 ALS Part 5—Fuel Airworthiness Limitations, dated November 16, 2011:

- AD 2006–21–08, Amendment 39–14793 (71 FR 61639, October 19, 2006).
- AD 2007–14–01, Amendment 39–15123 (72 FR 38006, July 12, 2007).
- AD 2008–25–02, Amendment 39–15760 (73 FR 75307, December 11, 2008).
- AD 2010–04–09, Amendment 39–16202 (75 FR 7940, February 23, 2010; corrected March 3, 2010 (75 FR 9515)).
- AD 2011–01–02, Amendment 39–16555 (76 FR 432, January 5, 2011).
- AD 2012–16–05, Amendment 39–17152 (77 FR 48425, August 14, 2012).

This proposed AD would require implementation of certain maintenance requirements and airworthiness limitations. This proposed AD would also require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the MCAI or Service Information.''

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these actions, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to the procedures specified in paragraph (j)(1) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Differences Between This Proposed AD and the MCAI or Service Information

This NPRM proposes to incorporate Airbus A330 ALS Part 5—Fuel Airworthiness Limitations, dated November 16, 2011, including ''the specified compliance times'' for the actions. However, the compliance times in this proposed AD for certain initial actions is different from those specified in Airbus A330 ALS Part 5—Fuel Airworthiness Limitations, dated November 16, 2011, because the actions were required by the ADs identified in the paragraph titled ''Related Rulemaking'' in this AD. Therefore, the initial compliance time is relative to the effective date of the applicable superseded AD, as specified in paragraph (h) of this NPRM.

Costs of Compliance

We estimate that this proposed AD affects 80 airplanes of U.S. registry.

We estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $6,800, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing AD 2006–21–08, Amendment 39–14793 (71 FR 61639, October 19, 2006); AD 2007–14–01, Amendment 39–15123 (72 FR 38006,

July 12, 2007); AD 2008–25–02, Amendment 39–15760 (73 FR 75307, December 11, 2008); AD 2010–04–09, Amendment 39–16202 (75 FR 7940, February 23, 2010; corrected March 3, 2010 (75 FR 9515)); AD 2011–01–02, Amendment 39–16555 (76 FR 432, January 5, 2011); AD 2012–16–05, Amendment 39–17152 (77 FR 48425, August 14, 2012); and

■ b. Adding the following new AD:

Airbus: Docket No. FAA–2014–0060; Directorate Identifier 2012–NM–194–AD.

(a) Comments Due Date

We must receive comments by April 14, 2014.

(b) Affected ADs

This AD supersedes the ADs specified in paragraphs (b)(1) through (b)(6) of this AD.

(1) AD 2006–21–08, Amendment 39–14793 (71 FR 61639, October 19, 2006).

(2) AD 2007–14–01, Amendment 39–15123 (72 FR 38006, July 12, 2007).

(3) AD 2008–25–02, Amendment 39–15760 (73 FR 75307, December 11, 2008).

(4) AD 2010–04–09, Amendment 39–16202 (75 FR 7940, February 23, 2010; corrected March 3, 2010 (75 FR 9515)).

(5) AD 2011–01–02, Amendment 39–16555 (76 FR 432, January 5, 2011).

(6) AD 2012–16–05, Amendment 39–17152 (77 FR 48425, August 14, 2012).

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –223F, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

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

(e) Reason

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

(f) Compliance

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

(g) Maintenance Program Revision and Airworthiness Limitations Compliance

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

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

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

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

(h) Exceptions to Compliance Times for Design Changes

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

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

(i) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections), intervals, or CDCCLs may be used; except as specified in paragraphs (h) and (i) of this AD; or unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval, as applicable). You are required to ensure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2012–0168, dated August 31, 2012; for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0060.

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

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

Jeffrey E. Duven,

Manager. Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04258 Filed 2–26–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0120; Directorate Identifier 2013–NM–056–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–215–6B11 (CL–215T Variant), and CL–215–6B11 (CL–415 Variant) airplanes. This proposed AD was prompted by several reports indicating that shorter nacelle strut bushings were inadvertently installed on certain airplanes. This proposed AD would require a general visual inspection of the left and right

nacelle upper strut bushings; installation of the bolts and preload indicating (PLI) washers, if necessary; and replacement of the bushing or repair of the bushing installation, if necessary. We are proposing this AD to detect and correct inadequate nacelle strut bushings, which provide insufficient engagement in the strut fork end, and could deform under the bearing load and lead to the failure of the joint.

DATES: We must receive comments on this proposed AD by April 14, 2014.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ricardo Garcia, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0120; Directorate Identifier 2013–NM–056–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–06, dated February 27, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It was discovered in several cases that nacelle strut bushings with part number (P/N), 85410265–105, have been inadvertently installed in lieu of P/N 85410265–103. Bushing P/N 85410265–105 is shorter than bushing P/N 85410265–103 and provides for less engagement in the strut fork end, P/N 215T16534–12/–13, which may deform under the bearing load leading to the failure of the joint.

The actions for this proposed AD include a general visual inspection of the left and right nacelle upper strut bushings; installation of the bolts and PLI washers, if necessary; and replacement of the bushing or repair of the bushing installation, if necessary. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0120.

Relevant Service Information

Bombardier, Inc. has issued Alert Service Bulletin 215–A3173, dated April 11, 2012, and Alert Service Bulletin 215–A4453, dated April 10, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 5 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	4 work-hours × $85 per hour = $340	$0	$340	$1,700

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	4 work-hours × $85 per hour = $340	$0	$340
Repair	4 work-hours × $85 per hour = $340	0	340

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2014–0120; Directorate Identifier 2013–NM–056–AD.

(a) Comments Due Date

We must receive comments by April 14, 2014.

(b) Affected ADs

None.

(c) Applicability

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

(1) Model CL–215–6B11 (CL–215T Variant) airplanes, serial numbers 1056, 1057, 1061, 1080, 1109, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, and 1125.

(2) Model CL–215–6B11 (CL–415 Variant) airplanes, serial numbers 2001 through 2067 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

(e) Reason

This AD was prompted by several reports indicating that shorter nacelle strut bushings were inadvertently installed on certain airplanes. We are issuing this AD to detect and correct inadequate nacelle strut bushings, which provide insufficient engagement in the strut fork end, and could deform under the bearing load and lead to the failure of the joint.

(f) Compliance

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

(g) Inspection of the Bushing

Within 3 months after the effective date of this AD: Do a general visual inspection to determine the part number of the left and right nacelle upper strut bushings, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A3173, dated April 11, 2012 (for Model CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4453, dated April 10, 2012 (for Model CL–215–6B11 (CL–415 Variant) airplanes).

(1) If any bushing with part number (P/N) 85410265–103 is installed: Before further flight, install the bolts and preload indicating (PLI) washers, in accordance with paragraph 2.G. of the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A3173, dated April 11, 2012 (for Model CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4453, dated April 10, 2012 (for Model CL–215–6B11 (CL–415 Variant) airplanes).

(2) If any bushing with P/N 85410265–105 is installed in either the left or right nacelle: Do the actions in paragraph (h) of this AD.

(h) Replacement or Repair of the Bushing

If any bushing with P/N 85410265–105 is found installed during the inspection required by paragraph (g) of this AD: Before further flight, do the actions specified in paragraph (h)(1) or (h)(2) of this AD.

(1) Replace the bushing in accordance with paragraph 2.E. of the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A3173, dated April 11, 2012 (for Model CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4453, dated April 10, 2012 (for Model CL–215–6B11 (CL–415 Variant) airplanes); and continue with the installation of bolt and PLI washer, in accordance with paragraph 2.G. of the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A3173, dated April 11, 2012 (for Model CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4453, dated April 10, 2012 (for Model CL–215–6B11 (CL–415 Variant) airplanes).

(2) Repair the bushing in accordance with paragraph 2.F. of the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A3173, dated April 11, 2012 (for Model CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4453, dated April 10, 2012 (for Model CL–215–6B11 (CL–415 Variant) airplanes); and continue with the installation of bolt and PLI washer, in accordance with paragraph 2.G. of the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A3173, dated April 11, 2012 (for Model CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4453, dated April 10, 2012 (for Model CL–215–6B11 (CL–415 Variant) airplanes).

(i) Replacement of Repaired Bushing

For any bushing that has been repaired as specified in paragraph (h)(2) of this AD: Within 5,000 flight hours after accomplishing the repair or at the next engine removal,

whichever occurs first, replace the bushing with P/N 85410265–103, in accordance with paragraph 2.E. of the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A3173, dated April 11, 2012 (for Model CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4453, dated April 10, 2012 (for Model CL–215–6B11 (CL–415 Variant) airplanes); and continue with the installation of bolt and PLI washer, in accordance with paragraph 2.G. of the Accomplishment Instructions of Bombardier Alert Service Bulletin 215–A3173, dated April 11, 2012 (for Model CL–215–6B11 (CL–215T Variant) airplanes); or Bombardier Alert Service Bulletin 215–A4453, dated April 10, 2012 (for Model CL–215–6B11 (CL–415 Variant) airplanes).

(j) No Further Action Required

(1) For airplanes on which a general visual inspection specified in paragraph (g) of this AD is done and it is determined that the nacelle strut bushings having P/N 85410265–103 are installed in the airplane: No further actions are required by this AD, provided the actions specified in paragraph (g)(1) of this AD have been done.

(2) For airplanes on which nacelle strut bushings having P/N 85410265–103 are installed as specified in paragraph (h)(1) or (i) of this AD, no further actions are required by this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–06, dated February 27, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0120.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04260 Filed 2–26–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 140127076–4076–01]

RIN 0605–AA33

Public Information, Freedom of Information Act and Privacy Act Regulations

AGENCY: Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes revisions to the Department of Commerce's (Department) regulations under the Freedom of Information Act (FOIA) and Privacy Act. The FOIA regulations are being revised to clarify, update and streamline the language of several procedural provisions, including methods for submitting FOIA requests and appeals and the time limits for filing an administrative appeal, and to incorporate certain of the changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007. Additionally, the FOIA regulations are being updated to reflect developments in the case law. The Privacy regulations are being revised to clarify, update and streamline several procedural provisions, including the methods for submitting appeals of Privacy Act requests and the time limits for filing a Privacy Act appeal. Additionally, the Privacy Act regulations are being updated to make technical changes to the applicable exemptions.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before March 31, 2014. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 0605–AA33, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 482–2552. Include the RIN 0605–AA33 in the subject line.
- *Mail:* Mark R. Tallarico, Senior Counsel, Office of the General Counsel, Department of Commerce, 1401 Constitution Avenue NW., Room 5099, Washington, DC 20230.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to regulations.gov, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mark R. Tallarico, 202–482–8156, or Britt E. Carlson, 202–482–8155.

SUPPLEMENTARY INFORMATION: Public Participation: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the Department.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business

information that it cannot be effectively redacted, all or part of the comment may not be posted on *http://www.regulations.gov.*

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

Discussion

This rule proposes revisions to the Department's regulations under the FOIA to clarify, update and streamline the language of several procedural provisions, including the methods for submitting FOIA requests and appeals and the time limits for responding to a request and filing an administrative appeal, and to incorporate certain of the changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524. Additionally, the FOIA regulations are being updated to reflect developments in the case law.

Specifically this action would amend the procedures for filing requests and appeals for both the FOIA and the Privacy Act, and allow parties to use delivery services or file online through FOIAonline (*http://foiaonline.regulations.gov*). The rule will also vest the Office of the Inspector General's (OIG) Counsel, rather than the Office of the Assistant General Counsel for Administration, with responsibility for addressing appeals for the OIG.

The Department further proposes to clarify when the 20-day statutory time limit for responding to requests begins (i.e., when requests are received by the proper DOC component's FOIA office, when requests are modified for purposes of reformulating a request so that it reasonably describes the requests sought). This rule would also clarify that certain inactions by a requester, such as his or her failure to respond to a component's one-time clarification request within 30 calendar days, failure to submit an agreement to pay anticipated fees in excess of $20 within 30 calendar days of the component's fee estimate, failure to make an advanced payment within 30 calendar days of the component's fee estimate, may result in a request being closed. For FOIA appeals, the Department proposes to clarify that if the deadline for filing an administrative appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5 p.m. Eastern Time, the next business day will be deemed timely.

To implement the OPEN Government Act of 2007, the Department proposes to: (1) Allow Department components to seek a one-time clarification of a request and toll the time period for responding to the request until the requester clarifies; (2) add a definition of ''Representative of the news media, or news media requester'' as defined in the OPEN Government Act; and (3) place limits on the fees charged when Department components do not comply with the statutory time limits under the FOIA.

This rule would modify the following Department FOIA regulations: § 4.1 (General Provisions), § 4.2 (Public reference facilities), § 4.3 (Records under the FOIA), § 4.4 (Requirements for making requests), § 4.5 (Responsibility for responding to requests), § 4.6 (Time limits and expedited processing), § 4.7 (Responses to requests), § 4.8 (Classified information), § 4.9 (Business information), § 4.10 (Appeals from initial determinations or untimely delays), and § 4.11 (Fees). In addition, new provisions implementing such changes are found at § 4.6(c) (Clarification of request), § 4.7(a) (Acknowledgment of requests), §§ 4.10(a)(1) and (2) and (b)(1)(2) (distinguishing where requesters should submit appeals from initial determinations or untimely delays), and § 4.11(d)(6) (Limitation on charging fees), with subsequent sections renumbered accordingly. Current § 4.2(c), § 4.2(d), and § 4.9(h)(1) are to be deleted and subsequent sections, if any, renumbered accordingly.

This rule also proposes revisions to the Department's regulations under the Privacy Act to clarify, update and streamline several procedural provisions, including the methods for submitting Privacy Act requests and appeals and the time limits for filing a Privacy Act appeal. In particular, the action will amend the Department's Privacy Act regulations regarding applicable exceptions to reflect new Department wide systems of records notices published since the last time the regulations were updated, and to make requesting your own medical records from the Department easier. Many of the other changes mirror those made to the FOIA regulations in order to maintain consistency between the provisions. The revisions of the Privacy Act regulations in subpart B of part 4 incorporate changes to the language of the regulations in the following provisions: § 4.25 (Disclosure of requested records to individuals); § 4.26 (Special considerations: Medical records); § 4.28 (Agency review of requests for correction or amendment); § 4.29 (Appeal of initial adverse agency determination on correction or amendment); § 4.33 (General exemptions); and § 4.34 (Specific exemptions).

Appendix A to part 4 is being revised to: update mailing addresses and telephone addresses of Department components for receipt and processing of requests for records under the FOIA and Privacy Act and requests for correction and amendment under the Privacy Act; include contact information for components receiving requests for records under the FOIA and Privacy Act and requests for correction and amendment under the Privacy Act; identify components maintaining public inspection facilities; and identify components maintaining separate online Electronic FOIA Libraries. Appendix B to part 4 is being revised to include an updated list of Department officials authorized to deny requests for records under the FOIA and Privacy Act and requests for correction or amendment under the Privacy Act.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chief Counsel for Regulation has reviewed this rule and certifies that this regulation, if implemented, will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. These fees are nominal, and therefore would not constitute a significant economic impact on a requester. Further, the number of ''small entities'' that make FOIA requests is relatively small compared to the number of individual requesters and other requesters who make such requests.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Office of Management and Budget has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, § 3(f), Regulatory Planning and Review.

Paperwork Reduction Act

This regulation does not contain a ''collection of information'' as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Lists of Subjects in 15 CFR Part 4

Appeals, Freedom of Information Act, Information, Privacy, Privacy Act.

Dated: February 12, 2014.

Catrina D. Purvis,

Chief Privacy Officer, and Director of Open Government.

For the reasons stated in the preamble, the Department of Commerce proposes to amend 15 CFR part 4 as follows:

PART 4—DISCLOSURE OF GOVERNMENT INFORMATION

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

Subpart A—Freedom of Information Act

■ 2. Amend § 4.1 by revising paragraph (a) to read as follows:

§ 4.1 General provisions.

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the Department of Commerce (Department) and its components follow to make publicly available materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C. 552(a)(3). Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part. In addition, as a matter of policy, the Department may make discretionary releases of records or information exempt from disclosure under the FOIA when permitted to do so in accordance with current law and governmental policy. This policy does not create any right enforceable in court.

* * * * *

■ 3. Amend § 4.2 by revising the section heading, paragraphs (a) and (b) and removing paragraphs (c) and (d) to read as follows:

§ 4.2 Public reading rooms.

(a) Records that the FOIA requires to be made available for public inspection and copying are accessible electronically through the Department's ''Electronic FOIA Library'' on the Department's Web site, *http://www.doc.gov,* which includes links to Web sites for those components that maintain Electronic FOIA Libraries. These records may also be accessible at the FOIAonline Web site, *http://foiaonline.regulations.gov.* Each component of the Department is responsible for determining which of its records are required to be made available, as well as identifying additional records of interest to the public that are appropriate for disclosure, and for making those records available either in its own Electronic Library or in the Department's central Electronic FOIA Library. Components that maintain their own Electronic FOIA Library are designated as such in Appendix A to this part. Each component shall maintain and make available for public inspection and copying a current subject-matter index of the records made available electronically. Each component shall ensure that posted records and indices are updated regularly, at least quarterly.

(b) If the requester does not have access to the Internet and wishes to obtain information regarding publicly available information, he or she may contact the component's FOIA office. Appendix A to this part contains the contact information for the components' FOIA offices. Some components may also maintain physical public reading rooms. These components and their contact information are listed in Appendix A of this part.

■ 4. Amend § 4.3 by revising paragraphs (a) through (c) to read as follows:

§ 4.3 Records under the FOIA.

(a) Records under the FOIA include all Government records, regardless of format, medium or physical characteristics, and electronic records and information, audiotapes, videotapes, Compact Disks, DVDs, and photographs.

(b) In response to a FOIA request, the Department has no obligation to create, compile, or obtain from outside the Department a record to satisfy a request (for example, extrapolating information from existing agency records, reformatting available information, preparing new electronic programs or databases, or creating data through calculations of rations, proportions, percentages, trends, frequency distributions, correlations, or comparisons). In complying with a request for records (including data and other electronically-stored information), whether the Department creates or compiles records (as by undertaking significant programming work) or merely extracts them from an existing database is fact dependent. The Department shall undertake reasonable efforts to search for records stored in electronic format (including data and other electronically-stored information).

(c) Department officials may, upon request, create and provide new records to the public pursuant to statutes that authorize the creation and provision of new records for a fee, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. Such creation and provision of records is outside the scope of the FOIA.

* * * * *

■ 5. Amend § 4.4 by revising paragraphs (a) through (c) to read as follows:

§ 4.4 Requirements for making requests.

(a) *How made and addressed.* The Department has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically either through electronic mail (email) or the FOIAonline Web site, *http://www.foiaonline.regulations.gov.* A request for Department records that are not customarily made available to the public as part of the Department's regular informational services (or pursuant to a user fee statute), must be in writing and shall be processed under the FOIA, regardless of whether the FOIA is mentioned in the request. Requests must include the requester's full name and a legible return address. Requesters may also include other contact information, such as an email address and a telephone number. For the quickest handling, the request (and envelope, if the request is mailed or hand delivered) should be marked ''Freedom of Information Act Request.'' Requests may be submitted by U.S. mail, delivery service, email, facsimile, or online at the FOIAonline Web site, *http://foiaonline.regulations.gov.* Requests made by mail, delivery service, email, or facsimile should be sent to the Department component identified in Appendix A to this part that maintains those records requested, and should be sent to the addresses, email addresses, or numbers listed in Appendix A to this part or the Department's Web site, *http://www.doc.gov.*[1] If the proper component cannot be determined, the request should be sent to the central facility identified in Appendix A to this part. The central facility will forward

[1] The United States Patent and Trademark Office (USPTO), which is established as an agency of the United States within the Department of Commerce, operates under its own FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records, and any appeals thereof, should be sent directly to the USPTO.

the request to the component(s) it believes most likely to have the requested records. Requests will be considered received for purposes of the 20-day time limit of § 4.6 as of the date it is received by the proper component's FOIA office.

(b) *Requests for records about an individual or oneself.* For requests for records about oneself, § 4.24 of this part contains additional requirements. For requests for records about another individual, either written authorization signed by the individual permitting disclosure of his or her records to the requester or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) will facilitate processing the request.

(c) *Description of records sought.* A FOIA request must reasonably describe the agency records sought, to enable Department personnel to locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record might be found. In addition, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions of the requested records should be included. As a general rule, the more specifically the request describes the records sought, the greater the likelihood that the Department will be able to locate those records. Before submitting their requests, requesters may contact the component's FOIA contact to discuss the records they are seeking and to receive assistance in describing the records (contact information for these individuals is contained in Appendix A to this part and on the Department's Web site, *http://www.doc.gov*). If a component determines that a request does not reasonably describe the records sought, it shall inform the requester what additional information is needed or how the request is otherwise insufficient, to enable the requester to modify the request to meet the requirements of this section. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA contact. When a requester fails to provide sufficient detail after having been asked to reasonably describe the records sought, the component shall notify the requester in writing that the request has not been properly made, that no further action will be taken, and that the FOIA request is closed. In cases where a requester has modified his or her request, the date of receipt for purposes of the 20-day time limit of § 4.6 shall be the date of receipt of the modified request.

■ 6. Amend § 4.5 by revising paragraphs (a) through (c) to read as follows:

§ 4.5 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the proper component of the Department to respond to a request for records is the component that first receives the request and has responsive records (or in the instance of where no records exist, the component that first receives the request and is likely to have responsive records), or the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request. Where a component's FOIA office determines that a request was misdirected within the Department, the receiving component's FOIA office shall route the request to the FOIA office of the proper component(s). Records responsive to a request shall include those records within the Department's possession and control as of the date the Department begins its search for them.

(b) *Consultations and referrals.* When a component receives a request for a record (or a portion thereof) in its possession that originated with another Federal agency subject to the FOIA, the component shall refer the record to that agency for direct response to the requester (see § 4.8 for additional information about referrals of classified information). In instances where a record is requested that originated with the Department and another Federal agency has a significant interest in the record (or a portion thereof), the component shall consult with that Federal agency before responding to a requester. When a component receives a request for a record (or a portion thereof) in its possession that originated with another Federal agency that is not subject to the FOIA, the component shall consult with that Federal agency before responding to the requester.

(c) *Notice of referral.* Whenever a component refers a record to another Federal agency for direct response to the requester, the component's FOIA Officer shall notify the requester in writing of the referral and inform the requester of the name of the agency to which the record was referred.

* * * * *

■ 7. Amend § 4.6 by redesignating paragraphs (c) through (f) as (d) through (g), revising paragraph (b) and newly redesignated paragraphs (d)(1) and (2), (e) and (f)(3), and adding new paragraph (c) to read as follows:

§ 4.6 Time limits and expedited processing.

* * * * *

(b) *Initial response and appeal.* Unless the component and the requester have agreed otherwise, or when ''unusual circumstances'' exist as provided for in paragraph (d) of this section, a determination whether to comply with a FOIA request shall be made by components within 20 working days (*i.e.,* excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request for a record under this part by the proper component identified in accordance with § 4.5(a). In instances involving misdirected requests that are re-routed pursuant to § 4.5(a), the response time shall commence on the date that the request is received by the proper component, but in any event not later than ten working days after the request is first received by any designated component. An administrative appeal, other than an appeal from a request made to the Office of the Inspector General, shall be decided within 20 working days of its receipt by the Office of the General Counsel. An administrative appeal from a request made to the Office of the Inspector General shall be decided within 20 working days of its receipt by the Office of the Inspector General Office of Counsel. The Department's failure to comply with the time limits identified in this paragraph constitutes exhaustion of the requester's administrative remedies for the purposes of judicial action to compel disclosure.

(c) *Clarification of request.* Components may seek a one-time clarification of a request for a record (including clarification related to the scope of the request) under this part. The component shall notify the requester in writing of its clarification's intentions. When a component seeks clarification of a request, the time for responding to a request set forth in § 4.6(b) is tolled until the requester responds to the clarification request. The tolling period will end when the component that sought the clarification receives a response from the requester. If a component asks for clarification and does not receive a written response from the requester within 30 calendar days from the date of the component's clarification request, the component will presume that the requester is no longer interested and notify the requester that the request will be closed.

(d) *Unusual Circumstances.* (1) Components may extend the time

period for processing a FOIA request only in ''unusual circumstances,'' as described in paragraph (d)(2) of this section, in which the component shall, before expiration of the twenty-day period to respond, notify the requester of the extension in writing of the unusual circumstances involved and of the date by which processing of the request is expected to be completed. If the extension is for more than ten working days, the component shall provide the requester with an opportunity to modify the request or agree to an alternative time period for processing the original or modified request.

(2) For purposes of this section, *unusual circumstances* include:

(i) The need to search for and collect the requested agency records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need to consult with another Federal agency having a substantial interest in the determination of the FOIA request or among two or more components of the Department having substantial subject-matter interest in the determination of the request.

* * * * *

(e) *Multi-track processing.* (1) A component must use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including the amount of pages involved, and whether the request qualifies for expedited processing as described in paragraph (f) of this section.

(2) A component using multi-track processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. A component doing so shall contact the requester by telephone, email, letter, or through the FOIAonline Web site, *http://foiaonline.regulations.gov,* whichever is the most efficient in each case.

(f) * * *

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (f)(1)(iv) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category described in paragraph (f)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request—one that extends beyond the public's right to know about Government activity generally. The existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an ''urgency to inform'' the public on a topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

* * * * *

■ 8. Amend § 4.7 by redesignating paragraphs (a) and (b) as (b) and (c), adding new paragraphs (a) and (d), and revising newly redesignated paragraphs (b) and (c) to read as follows:

§ 4.7 Responses to requests.

(a) *Acknowledgment of requests.* Upon receipt of a request, a component ordinarily shall send an acknowledgement letter to the requester which shall provide an assigned request number for further reference and, if necessary, confirm whether the requester is willing to pay fees.

(b) *Grants of requests.* If a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing of such determination and disclose records to the requester promptly upon payment of any applicable fees. Records disclosed in part shall be marked or annotated to show the applicable FOIA exemption(s) and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(c) *Adverse determinations of requests.* If a component makes an adverse determination regarding a request, it shall notify the requester of that determination in writing. An adverse determination is a denial of a request and includes decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has previously been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(d) *Content of denial.* The denial letter shall be signed by an official listed in Appendix B to this part (or a designee), and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption(s) applied by the component in denying the request;

(3) An estimate of the volume of any records or information withheld, by providing the number of pages or some other reasonable form of estimation. This estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable FOIA exemption; and

(4) A statement that the denial may be appealed under § 4.10 of this subpart, and a list of the requirements for filing an appeal set forth in § 4.10(b).

■ 9. Amend § 4.8 by revising it to read as follows:

§ 4.8 Classified information.

In processing a request for information classified under Executive Order 13526 or any other executive order concerning the classification of records, the information shall be reviewed to determine whether it should remain classified. Ordinarily the component or other Federal agency that classified the information should conduct the review, except that if a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the underlying information. Information determined to no longer require classification shall not be withheld on the basis of FOIA exemption (b)(1) (5 U.S.C. 552(b)(1)), but should be reviewed to assess whether any other FOIA exemption should be invoked. Appeals involving classified information shall be processed in accordance with § 4.10(c).

■ 10. Amend § 4.9 by revising paragraphs (c), (h) and (j) to read as follows:

§ 4.9 Business information.

* * * * *

(c) *Designation of business information.* A submitter of business

information must use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under FOIA exemption (b)(4) of this section. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

* * * * *

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The component determines that the information is exempt under a FOIA exemption, other than exemption (b)(4);

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, except that, in such a case, the component shall provide the submitter written notice of any final decision to disclose the information seven working days from the date the submitter receives the notice.

* * * * *

(j) *Corresponding notice to requester.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall notify the requester that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response. The notice to the requester will not include any of the specific information contained in the records being requested. Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester of such action and, as a consequence, there may be further delay in receiving a response.

* * * * *

■ 11. Amend § 4.10 by revising paragraphs (a) through (c) to read as follows:

§ 4.10 Appeals from initial determinations or untimely delays.

(a)(1) If a request for records to a component other than the Office of Inspector General is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse determination regarding any other matter listed under this subpart (as described in § 4.7(c)), the requester may file an appeal. Appeals can be submitted in writing or electronically, as described in paragraph (b)(1) of this section. The appeal must be received by the Office of the General Counsel during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) within 30 calendar days of the date of the written denial of the adverse determination or, if there has been no determination, an appeal may be submitted any time after the due date, including the last extension under § 4.6(d), of the adverse determination. Written or electronic appeals arriving after normal business hours will be deemed received on the next normal business day. If the 30th calendar day falls on a Saturday, Sunday, or a legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. Appeals received after the 30-day limit will not be considered.

(2) If a request for records to the Office of Inspector General is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse determination regarding any other matter listed under this subpart (as described in § 4.7(c)), the requester may file an appeal. Appeals can be submitted in writing or electronically, as described in paragraph (b)(2) of this section. The appeal must be received by the Office of Inspector General, Office of Counsel, during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) within 30 calendar days of the date of the written denial of the adverse determination or, if there has been no determination, an appeal may be submitted any time after the due date, including the last extension under § 4.6(d), of the adverse determination. Written or electronic appeals arriving after normal business hours will be deemed received on the next normal business day. If the 30th calendar day falls on a Saturday, Sunday, or a legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. Appeals received after the 30-day limit will not be considered.

(b)(1) Appeals, other than appeals from requests made to the Office of Inspector General, shall be decided by the Assistant General Counsel for Administration (AGC-Admin), except that appeals for records which were initially denied by the AGC-Admin shall be decided by the General Counsel. Written appeals should be addressed to the AGC-Admin, or the General Counsel if the records were initially denied by the AGC-Admin. The address of both is: U.S. Department of Commerce, Office of the General Counsel, Room 5875, 14th and Constitution Avenue NW., Washington, DC 20230. An appeal may also be sent via facsimile at 202–482–2552. For a written appeal, both the letter and the appeal envelope should be clearly marked ''Freedom of Information Act Appeal.'' Appeals may also be submitted electronically either by email to *FOIAAppeals@doc.gov* or online at the FOIAonline Web site, *http://foiaonline.regulations.gov,* if requesters have a FOIAonline account. In all cases, the appeal (written or electronic) must include a copy of the original request and initial denial, if any. All appeals must include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, AGC-Admin, or the General Counsel if the records were initially denied by AGC-Admin, ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester's appeal.

(2) Appeals of initial and untimely determinations by the Office of Inspector General shall be decided by the Counsel to the Inspector General, except that appeals for records which were initially denied by the Counsel to the Inspector General shall be decided by the Deputy Inspector General. Written appeals should be addressed to the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General. The address of both is: U.S. Department of Commerce, Office of Counsel, Room 7898C, 14th and Constitution Avenue NW., Washington, DC 20230. An appeal may also be sent via facsimile at 202–501–7335. For a written appeal, both the letter and the appeal envelope should be clearly marked ''Freedom of Information Act Appeal.'' Appeals may also be submitted electronically either by email to *FOIA@oig.doc.gov* or online at the FOIAonline Web site, *http://foiaonline.regulations.gov,* if requesters have a FOIAonline account. In all cases, the appeal (written or electronic) must include a copy of the original request and initial denial, if any. All appeals must include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No

opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General, ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester's appeal.

(c) Upon receipt of an appeal involving records initially denied on the basis of FOIA exemption (b)(1), the records shall be forwarded to the Deputy Assistant Secretary for Security (DAS) for a declassification review. The DAS may overrule previous classification determinations in whole or in part if continued protection in the interest of national security is no longer required, or no longer required at the same level. The DAS shall advise the AGC-Admin, the General Counsel, Counsel to the Inspector General, or Deputy Inspector General, as appropriate, of his or her decision.

■ 12. Amend § 4.11 by:

■ a. Revising paragraphs (a), (b)(2)-(4), (b)(6) and (7), (c)(2), (c)(3)(ii), (c)(4), (d)(1) and paragraph (i);

■ b. Adding subparagraphs (1) and (2) to paragraph (e);

■ c. Redesignating paragraphs (j) and (k) as (k) and (l); and

■ d. Adding a new paragraph (j).

The changes to read as follows:

§ 4.11 Fees.

(a) *In general.* Components shall charge fees for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or when a waiver or reduction is granted under paragraph (k) of this section. A component shall collect all applicable fees before processing a request if a component determines that advance payment is required in accordance with paragraphs (i)(2) and (i)(3) of this section. If advance payment of fees is not required, a component shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

* * * * *

(b)(2) *Direct costs* means those expenses a component incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16% of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, heating, or lighting of the facility in which the service is performed.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microform, audiovisual materials, or electronic records, among others. A component shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category, a request must serve the scholarly research goal of the institution rather than an individual research goal.

Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional letterhead.

Example 3. A student who makes a request in furtherance of the completion of a course of instruction would be presumed to be carrying out an individual research goal, rather than a scholarly research goal of the institution, and would not qualify as part of this fee category.

* * * * *

(6) *Representative of the news media, or news media requester,* means any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at-large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public including news organizations that disseminate solely on the Internet. To be in this category, a requester must not be seeking the requested records for a commercial use. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. A component's decision to grant a requester media status will be made on a case-by-case basis based upon the requester's intended use of the material.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting it and marking any applicable exemptions. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent obtaining and considering any formal objection to disclosure made by a business submitter under § 4.9, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

* * * * *

(c) * * *

(2) Uniform fee schedule.

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.

Service	Rate
(ii) Computerized search	Actual direct cost, including operator time.
(iii) Review of records	Actual salary rate of employee conducting review, plus 16 percent of salary rate.
(iv) Duplication of records:	
(A) Paper copy reproduction	$.16 per page
(B) Other reproduction (e.g., converting paper into an electronic format (e.g., scanning), computer disk or printout, or other electronically-formatted reproduction (e.g., uploading records made available to the requester into FOIAonline)).	Actual direct cost, including operator time.

* * * * *

(3) * * *

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to search for responsive records, as well as the costs of the operator/programmer salary apportionable to the search.

(4) *Duplication.* Duplication fees shall be charged to all requesters, subject to the limitations of paragraph (d) of this section. A component shall honor a requester's preference for receiving a record in a particular form or format where it is readily producible by the component in the form or format requested. For either a photocopy or a computer-generated printout of a record (no more than one copy of which need be supplied), the fee shall be $.16 per page. Requesters may reduce costs by specifying double-sided duplication, except where this is technically not feasible. For electronic forms of duplication, other than a computer-generated printout, components will charge the direct costs of that duplication. Such direct costs will include the costs of the requested electronic medium on which the copy is to be made and the actual operator time and computer resource usage required to produce the copy, to the extent they can be determined.

* * * * *

(d) * * *. (1) No search fees shall be charged for requests from educational institutions, non-commercial scientific institutions, or representatives of the news media.

* * * * *

(6) No search fees shall be charged to a FOIA requester when a component does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, unless unusual or exceptional circumstances (as those terms are defined by the FOIA) apply to the processing of the request.

(7) No duplication fees shall be charged to requesters in the fee category of a representative of the news media or an educational or noncommercial scientific institution when a component does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, unless unusual or exceptional circumstances (as those terms are defined by the FOIA) apply to the processing of the request.

* * * * *

(e) *Notice of anticipated fees in excess of $20.00.* (1) When a component determines or estimates that the fees for processing a FOIA request will total more than $20.00 or total more than the amount the requester indicated a willingness to pay, the component shall notify the requester of the actual or estimated amount of the fees, unless the requester has stated in writing a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost.

(2) When a requester has been notified that the actual or estimated fees will amount to more than $20.00, or amount to more than the amount the requester indicated a willingness to pay, the component will do no further work on the request until the requester agrees in writing to pay the actual or estimated total fee. The component will toll the processing of the request while it notifies the requester of the actual or estimated amount of fees and this time will be excluded from the twenty (20) working day time limit (as specified in section 4.6(b)). The requester's agreement to pay fees must be made in writing, must designate an exact dollar amount the requester is willing to pay, and must be received within 30 calendar days from the date of the notification of the fee estimate. If the requester fails to submit an agreement to pay the anticipated fees within 30 calendar days from the date of the component's fee notice, the component will presume that the requester is no longer interested and notify the requester that the request will be closed.

* * * * *

(i)(1) *Advance payments.* For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make an advance payment (*i.e.,* a payment made before a component begins to process or continues work on a request). Payment owed for work already completed (*i.e.,* a pre-payment before copies of responsive records are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that the total fee for processing a FOIA request will be $250.00 or more, the component shall notify the requester of the actual or estimated fee and require the requester to make an advance payment of the entire anticipated fee before beginning to process the request. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost.

(3) When a requester has previously failed to pay a properly charged FOIA fee to any component or other Federal agency within 30 calendar days of the date of billing, the component shall notify the requester that he or she is required to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request from that requester. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost.

(4) When the component requires advance payment or payment due under paragraphs (i)(2) and (i)(3) of this section, the component will not further process the request until the required payment is made. The component will toll the processing of the request while it notifies the requester of the advanced payment due and this time will be excluded from the twenty (20) working day time limit (as specified in section 4.6(b)). If the requester does not pay the advance payment within 30 calendar days from the date of the component's fee notice, the component will presume that the requester is no longer interested and notify the requester that the request will be closed.

(j) *Tolling.* When necessary for the component to clarify issues regarding fee assessment with the FOIA requester, the time limit for responding to the FOIA request is tolled until the component resolves such issues with the requester.

* * * * *

■ 13. Amend § 4.25 by revising paragraph (g)(1) to read as follows:

§ 4.25 Disclosure of requested records to individuals.

* * * * *

(g) * * * (1) *Grounds.* Access by an individual to a record that pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(i) The record is exempt under § 4.33 or 4.34, or exempt by determination of another agency publishing notice of the system of records, as described in § 4.23(f);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 4.26 pertaining to medical records have been invoked; or

(iv) The individual unreasonably has failed to comply with the procedural requirements of this part.

* * * * *

■ 14. Revise § 4.26 to read as follows:

§ 4.26 Special procedures: Medical records.

When a request for access involves medical or psychological records, the records will be reviewed by the Department's medical officer for a determination on whether disclosure would be harmful to the individual to whom they relate. If it is determined that disclosure would be harmful, the Department may refuse to disclose the records directly to the requester but shall transmit them to a doctor authorized in writing by the individual to whom the records relate to receive the documents.

If an individual refuses to provide written authorization to release his or her medical records to a doctor, barring any applicable exemption, the Department shall give the individual access to his or her records by means of a copy, provided without cost to the requester, sent registered mail, return receipt requested.

■ 15. Amend § 4.28 by revising paragraph (a)(1)(ii) and (a)(2) to read as follows:

§ 4.28 Agency review of requests for correction or amendment.

* * * * *

(a) * * *

(1) * * *

(ii) If the Privacy Officer fails to send the acknowledgment within ten working days, as provided in paragraph (a)(1)(i) of this section, the requester may ask the Assistant General Counsel for Administration, or in the case of a request to the Office of the Inspector General, the Counsel to the Inspector General, to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the ten working days, the Privacy Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or, in cases in which a copy cannot be provided, a statement as to the means by which the correction or amendment was effected; or

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The Privacy Officer's name and title or position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this subpart; and

(D) The procedures for appeal of the denial as set forth in § 4.29, including the address of the Assistant General Counsel for Administration, or in the case of a request to the Office of the Inspector General, the address of the Counsel to the Inspector General.

* * * * *

■ 16. Amend § 4.29 by revising paragraphs (a), (b), (c), (e), the introductory text to (g),(g)(1), (h), and (i) to read as follows:

§ 4.29 Appeal of initial adverse agency determination on correction or amendment.

(a) If a request for correction or amendment is denied initially under § 4.28, the individual may submit a written appeal within thirty calendar days of the date of the initial denial. The appeal must be received by the General Counsel, or by the Counsel to the Inspector General in the case of an appeal of an initial adverse determination by the Office of Inspector General, during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) within 30 calendar days of the date of the initial denial. Appeals arriving after normal business hours will be deemed received on the next normal business day. If the 30th calendar day falls on a Saturday, Sunday, or a legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

(b)(1) An appeal from a request to a component other than the Office of the Inspector General should be addressed to the Assistant General Counsel for Administration, U.S. Department of Commerce, Room 5875, 14th and Constitution Avenue NW., Washington, DC 20230. An appeal should include the words ''Privacy Act Appeal'' at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the Assistant General Counsel for Administration. An appeal which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time periods in this section until actual receipt by the Assistant General Counsel for Administration. In each instance when an appeal so forwarded is received, the Assistant General Counsel for Administration shall notify the individual that his or her appeal was improperly addressed and the date on which the appeal was received at the proper address.

(2) An appeal of an initial adverse determination on correction or amendment by the Office of Inspector General should be addressed to the Counsel to the Inspector General, U.S. Department of Commerce, Room 7898C, 14th and Constitution Avenue NW., Washington, DC 20230. An appeal should include the words ''Privacy Act Appeal'' at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the

Counsel to the Inspector General. An appeal which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time periods in this section until actual receipt by the Counsel to the Inspector General. In each instance when an appeal so forwarded is received, the Counsel to the Inspector General shall notify the individual that his or her appeal was improperly addressed and the date on which the appeal was received at the proper address.

(c) The individual's appeal shall be signed by the individual, and shall include a statement of the reasons for why the initial denial is believed to be in error, and the Department's control number assigned to the request. The Privacy Act Officer who issued the initial denial shall furnish to the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, to the Counsel to the Inspector General, the record(s) the individual requests to be corrected or amended, and all correspondence between the Privacy Officer and the requester. Although the foregoing normally will comprise the entire record on appeal, the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, may seek any additional information necessary to ensure that the final determination is fair and equitable and, in such instances, disclose the additional information to the individual to the greatest extent possible, and provide an opportunity for comment thereon.

* * * * *

(e) The Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall act upon the appeal and issue a final determination in writing not later than thirty working days (*i.e.,* excluding Saturdays, Sundays and legal public holidays) from the date on which the appeal is received, except that the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will be issued. The estimated date should not be later than the sixtieth day after receipt of the appeal unless unusual circumstances, as described in § 4.25(a), are met.

* * * * *

(g) If the appeal is denied, the final determination shall be transmitted promptly to the individual and state the reasons for the denial. The notice of final determination shall inform the individual that:

(1) The individual has a right under the Act to file with the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, a concise statement of reasons for disagreeing with the final determination. The statement ordinarily should not exceed one page and the Department reserves the right to reject an excessively lengthy statement. It should provide the Department control number assigned to the request, indicate the date of the final determination and be signed by the individual. The Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall acknowledge receipt of such statement and inform the individual of the date on which it was received;

* * * * *

(h) In making the final determination, the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall employ the criteria set forth in § 4.28(c) and shall deny an appeal only on grounds set forth in § 4.28(e).

(i) If an appeal is partially granted and partially denied, the Assistant General Counsel for Administration, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

■ 17. Amend § 4.33 by revising paragraph (b) introductory text and (b)(1) to read as follows:

§ 4.33 General exemptions.

* * * * *

(b) The general exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) *Individuals identified in Export Transactions*—COMMERCE/BIS–1. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid endangering law enforcement personnel. Section 12(c) of the Export Administration Act of 1979, as amended, also protects this information from disclosure.

* * * * *

■ 18. Amend § 4.34 by revising paragraphs (a)(1), (b) introductory text, (b)(2)(i), (b)(3)(i) and (b)(4)(i) to read as follows:

§ 4.34 Specific exemptions.

(a)(1) Certain systems of records under the Act that are maintained by the Department may occasionally contain material subject to 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the **Federal Register** by the Department that are within this exemption are:

COMMERCE/BIS–1, COMMERCE/ITA–2, COMMERCE/ITA–3, COMMERCE/NOAA–11, COMMERCE–PAT–TM–4, COMMERCE/DEPT–12, COMMERCE/DEPT–13, and COMMERCE/DEPT–14.

* * * * *

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

* * * * *

(2)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Individuals identified in Export Administration compliance proceedings or investigations—COMMERCE/BIS–1, but only on condition that the general

exemption claimed in § 4.33(b)(1) is held to be invalid;

* * * * *

(3)(i) Exempt under 5 U.S.C. 552a(k)(4). The systems of records exempt, the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Special Censuses, Surveys, and Other Studies—COMMECE/CENSUS–3;

(B) Economic Survey Collection—COMMERCE/CENSUS–4;

(C) Decennial Census Program—COMMERCE/CENSUS–5;

(D) Population Census Records for 1910 & All Subsequent Decennial Census—COMMERCE/CENSUS–6;

(E) Other Agency Surveys & Reimbursable—COMMERCE/CENSUS–7;

(F) Statistical Administrative Records System—COMMERCE/CENSUS–8;

(G) Longitudinal Employer-Household Dynamics System—COMMERCE/CENSUS–9; and

(H) Foreign Trade Statistics—COMMERCE/CENSUS–12.

* * * * *

(4)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA–1;

(B) USMMA Midshipman Medical Files—COMMERCE/MA–17;

(C) USMMA Midshipman Personnel Files—COMMERCE/MA–18;

(D) USMMA Non-Appropriated Fund Employees—COMMERCE/MA–19;

(E) Applicants for the NOAA Corps—COMMERCE/NOAA–1;

(F) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA–3;

(G) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT–3

(H) Investigative and Inspection Records—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be valid;

(I) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT–13; and

(J) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT–14.

* * * * *

■ 19. Revise Appendix A to Part 4 to read as follows:

Appendix A to Part 4—Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act

Each address listed below is the respective component's mailing address for receipt and processing of requests for records under the Freedom of Information Act and Privacy Act, for requests for correction or amendment under the Privacy Act and, unless otherwise noted, its public inspection facility for records available to the public under the Freedom of Information Act. Requests should be addressed to the component the requester knows or has reason to believe has possession of, control over, or primary concern with the records sought. Otherwise, requests should be addressed to the Departmental FOIA Office identified in subparagraph (1), below. The telephone and facsimile numbers for each component are included after its address, as well as email addresses for components that maintain an email address for the purposes of receiving of FOIA and Privacy Act requests. Records of components that are required to be made publicly available are available electronically either through the Department's ''Electronic FOIA Library'' on the Department's Web site, *http://www.doc.gov,* as described in § 4.2(a), or the component's separate online Electronic FOIA Library as indicated below. Components that maintain a public inspection facility are designated as such below. These public inspection facilities records are open to the public Monday through Friday (*i.e.,* excluding Saturdays, Sundays, and legal public holidays) between 9:00 a.m. and 4:00 p.m. local time of the facility at issue. The Departmental Freedom of Information Act Officer is authorized to revise this appendix to reflect changes in the information contained in it. Any such revisions shall be posted on the Department's ''FOIA Home Page'' link found at the Department's Web site, *http://www.doc.gov.*

(1) U.S. Department of Commerce, Office of Privacy and Open Government, Departmental FOIA Office, 14th and Constitution Avenue NW., Mail Stop A300, Washington, DC 20230; Phone: (202) 482–3258; Fax: (202) 482–0827; Email: *EFoia@doc.gov*; FOIAonline: *http://foiaonline.regulations.gov.* This component maintains an online Electronic FOIA Library through the Department's Web site, *http://www.doc.gov.* This online Electronic FOIA Library serves the Office of the Secretary, all other components of the Department not identified below, and those components identified below that do not have separate online Electronic FOIA Libraries.

(2) Bureau of the Census, Policy Coordination Office, U.S. Department of Commerce, Room 8H027, 4600 Silver Hill Road, Suitland, Maryland 20233; Ph.: (301) 763–6440; Fax: (301) 763–6239 (ATTN.: FOIA Office); Email: *cemsus.efoia@census.gov;* FOIAonline: *http://foiaonline.regulations.gov.* This component maintains a separate online Electronic FOIA Library through its Web site, *http://www.census.gov.*

(3) Bureau of Economic Analysis/Economic and Statistics Administration, Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce, 14th and Constitution Avenue NW., Mail Stop H4836, Washington, DC 20230; Ph.: (202) 482–5997; Fax: (202) 482–2889; Email: *EFOIAESA@doc.gov;* FOIAonline: *http://foiaonline.regulations.gov.* This component maintains a separate online Electronic FOIA Library through its Web site, *http://www.esa.doc.gov.*

(4) Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Mails Stop H6622, Washington, DC 20230; Ph.: (202) 482–0953; Fax: (202) 482–0326; Email: *efoiarequest@bis.doc.gov;* FOIAonline: *http://foiaonline.regulations.gov.* This component maintains a separate online Electronic FOIA Library through its Web site, *http://www.bis.doc.gov.*

(5) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 7325, Washington, DC 20230; Ph.: (202) 482–3085; Fax: (202) 482–5671; FOIAonline: *http://foiaonline.regulations.gov.* This component does not maintain a separate online Electronic FOIA Library, nor do any of the following Regional EDA offices.

(i) Atlanta Regional Office, EDA, U.S. Department of Commerce, 401 West Peachtree Street NW., Suite 1820, Atlanta, Georgia 30308; Ph.: (404) 730–3006.

(ii) Austin Regional Office, EDA, U.S. Department of Commerce, 504 Lavaca Street, Suite 1100, Austin, Texas 78701; Ph.: (512) 381–8165.

(iii) Chicago Regional Office, EDA, U.S. Department of Commerce, 111 North Canal Street, Suite 855, Chicago, Illinois 60606; Ph.: (312) 353–8143.

(iv) Denver Regional Office, EDA, U.S. Department of Commerce, 410 17th Street, Suite 250, Denver, Colorado 80202; Ph.: (303) 844–4404.

(v) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Curtis Center, Suite 140 South, 601 Walnut Street, Philadelphia, Pennsylvania 19106; Ph.: (215) 597–7896.

(vi) Seattle Regional Office, EDA, U.S. Department of Commerce, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174; Ph.: (206) 220–7663.

(6) International Trade Administration, Office of Strategic Resources, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 40003, Washington, DC 20230; Ph.: (202) 482–7937; Fax: (202) 482–1584; Email: *foia@trade.gov;* FOIAonline: *http://foiaonline.regulations.gov.* This component does not maintain a separate online Electronic FOIA Library.

(7) Minority Business Development Agency, Office of Administration and Employee Support Services, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 5092, Washington, DC 20230; Ph.: (202) 482–2419; Fax: (202) 482–2500; Email: *FOIA@mbda.gov;* FOIAonline: *http://*

foiaonline.regulations.gov. This component maintains a separate online Electronic FOIA Library through its Web site, *http://www.mbda.gov.*

(8) National Institute of Standards and Technology, Management and Organization Office, U.S. Department of Commerce, 100 Bureau Drive, Mail Stop 1710, Gaithersburg, Maryland 20899–1710; Ph.: (301) 975–4054; Fax: (301) 926–8091; Email: *foia@nist.gov;* FOIAonline: *http://foiaonline.regulations.gov.* This component maintains a separate public inspection facility at the Administration Building, Gaithersburg, Maryland. Please call (301) 975–4054 for inspection facility directions and hours. This component does not maintain a separate online Electronic FOIA Library.

(9) National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1315 East-West Highway (SSMC3), Room 9719, Silver Spring, Maryland 20910; Ph.: (301) 628–5658; Fax: (301) 713–1169; Email: *foia@noaa.gov;* FOIAonline: *http://foiaonline.regulations.gov.* This component maintains a separate online Electronic FOIA Library through its Web site, *http://www.noaa.gov.*

(10) National Technical Information Service, Office of the Chief Information Officer, U.S. Department of Commerce, 5301 Shawnee Road, Room 227, Alexandria, Virginia 22312; Ph.: (703) 605–6710; Fax: (703) 605–6764; FOIAonline: *http://foiaonline.regulations.gov.* This component maintains a separate online Electronic FOIA Library through its Web site, *http://www.ntis.gov.*

(11) National Telecommunications and Information Administration, Office of the Chief Counsel, U.S. Department of Commerce, 14th and Constitution Avenue NW., Mail Stop 4713, Washington, DC 20230; Ph.: (202) 482–1816; Fax: (202) 501–8013; Email: *eFOIA@NTIA.doc.gov;* FOIAonline: *http://foiaonline.regulations.gov.* This component does not maintain a separate online Electronic FOIA Library.

(12) Office of Inspector General, FOIA and Records Management Specialist, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 7099C, Washington, DC 20230; Ph.: (202) 482–3470; Fax: (202) 501–7921; Email: *FOIA@oig.doc.gov;* FOIAonline: *http://foiaonline.regulations.gov.* This component maintains a separate online Electronic FOIA Library through its Web site, *http://www.*oig.doc.gov.

■ 20. Revise Appendix B to Part 4 to read as follows:

Appendix B to Part 4—Officials Authorized To Deny Requests for Records Under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment Under the Privacy Act

The officials of the Department listed below and their superiors have authority, with respect to the records for which each is responsible, to deny requests for records under the FOIA,[2] and requests for records and requests for correction or amendment under the PA. In addition, the Departmental Freedom of Information Officer and the Freedom of Information Officer for the Office of the Secretary have the foregoing FOIA and PA denial authority for all records of the Department. The Departmental Freedom of Information Officer is authorized to assign that authority, on a case-by-case basis only, to any of the officials listed below, if the records responsive to a request include records for which more than one official listed below is responsible. The Departmental Freedom of Information Officer is authorized to revise this appendix to reflect changes in designation of denial officials. Any such revisions shall be posted on the Department's ''FOIA Home Page'' link found at the Department's Web site, *http://www.doc.gov.*

Office of the Secretary

Office of the Secretary: Executive Secretary; Freedom of Information Officer
Office of Business Liaison: Director
Office of Public Affairs: Director; Deputy Director; Press Secretary; Deputy Press Secretary

Assistant Secretary for Legislative and Intergovernmental Affairs; Deputy Assistant Secretary for Legislative and Intergovernmental Affairs

Office of Inspector General: Deputy Inspector General; FOIA and Records Management Specialist; Assistant Inspector General for Administration; Counsel to the Inspector General
Office of the General Counsel: Deputy General Counsel; Assistant General Counsel for Administration
Office of Executive Support: Director
Office of Chief Information Officer: Director

Assistant Secretary for Administration

Office of Civil Rights: Director
Office of Budget: Director
Office of Privacy and Open Government: Director

Departmental Freedom of Information Officer

Office of Program Evaluation and Risk Management: Director
Office of Financial Management: Director
Office of Human Resources Management: Director; Deputy Director
Office of Administrative Services: Director
Office of Security: Director
Office of Acquisition Management: Director
Office of Acquisition Services: Director
Office of Small and Disadvantaged Business Utilization: Director

Bureau of Industry and Security

Under Secretary
Deputy Under Secretary
Director, Office of Administration
Director, Office of Planning, Evaluation and Management
Assistant Secretary for Export Administration
Deputy Assistant Secretary for Export Administration
Director, Office of Strategic Industries and Economic Security
Director, Director, Office of Nonproliferation Controls and Treaty Compliance
Director, Office of Exporter Services
Assistant Secretary for Export Enforcement
Deputy Assistant Secretary for Export Enforcement
Director, Office of Export Enforcement
Director, Office of Enforcement Analysis
Director, Office of Antiboycott Compliance

Economics and Statistics Administration

Office of Administration: Director
Bureau of Economic Analysis: Director
Bureau of the Census: Freedom of Information Act Officer

Economic Development Administration

Freedom of Information Officer

International Trade Administration

Executive Administration

Under Secretary for International Trade
Deputy Under Secretary for International Trade
Chief Counsel for International Trade
Chief Counsel for Enforcement and Compliance
Trade Promotion Coordinating Committee Secretariat
Director, Office of Public Affairs
Director, Office of Legislative and Intergovernmental Affairs
Chief Information Officer
Deputy Chief Information Officer
Chief Administrative Officer, Office of the Chief Information Officer
Chief Financial and Administration Officer
Deputy Chief Financial Administrative Officer
Director, Budget Division
Director, Financial Management and Administrative Oversight Division
Director, Business Operations and Policy Compliance Division
Director, Performance Management and Employee Programs Division
Freedom of Information Act Officer

Enforcement and Compliance

Assistant Secretary for Enforcement and Compliance
Deputy Assistant Secretary for Enforcement and Compliance
Director, Office of Foreign Trade Zones Staff
Director, Office of Operations Support
Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations
Executive Director, Antidumping and Countervailing Duty Operations
Director, Office of Antidumping and Countervailing Duty Enforcement I
Director, Office of Antidumping and Countervailing Duty Enforcement II
Director, Office of Antidumping and Countervailing Duty Enforcement III
Director, Office of Antidumping and Countervailing Duty Enforcement IV
Director, Office of Antidumping and Countervailing Duty Enforcement V
Director, Office of Antidumping and Countervailing Duty Enforcement VI
Director, Office of Antidumping and Countervailing Duty Enforcement VII
Deputy Assistant Secretary for Policy & Negotiations

[2] The foregoing officials have sole authority under § 4.7(c) to deny requests for records in any respect, including, for example, denying requests for reduction or waiver of fees.

Director, Office of Trade Agreements Negotiations and Compliance
Director, Office of Accounting
Director, Office of Policy

Global Markets

Assistant Secretary of Global Markets and Director General for the US&FCS
Deputy Director General
Principal Deputy Assistant Secretary
Executive Director, Advocacy Center
Director, Business Information and Technology Office
Director, Global Knowledge Center
Director, Office of Budget
Director, Office of Foreign Service Human Capital
Director, Office of Strategic Planning
Director, Office of Administrative Services
Executive Director, SelectUSA
Deputy Assistant Secretary for U.S. Field
National U.S. Field Director
Deputy Assistant Secretary for Asia
Executive Director for Asia
Director, Office of the ASEAN and Pacific Basin
Director, Office of East Asia and APEC
Director, Office of South Asia
Deputy Assistant Secretary for China, Hong Kong, and Mongolia
Executive Director for China, Hong Kong, and Mongolia
Director, Office of China, Hong Kong, and Mongolia
Deputy Assistant Secretary for Western Hemispheres
Executive Director for Western Hemispheres
Director, Office of North and Central America
Director, Office of South America
Deputy Assistant Secretary for Europe, Middle East, and Africa
Executive Deputy Assistant Secretary for Europe, Middle East, and Africa
Executive Director for Europe and Eurasia
Director, Office of Europe Country Affairs
Director, Office of the European Union
Director, Office of Russia, Ukraine, and Eurasia
Executive Director for Africa and Middle East
Director, Office of the Middle East and North Africa
Director, Office of Sub-Saharan Africa

Industry and Analysis

Assistant Secretary for Industry and Analysis
Deputy Assistant Secretary for Industry and Analysis
Trade Agreements Secretariat
Executive Director, Office of Trade Programs and Strategic Partnerships
Director, Trade Promotion Programs
Director, Strategic Partnerships
Director, Office of Advisory Committees and Industry Outreach
Director, Office of Planning, Coordination and Management
Deputy Assistant Secretary for Services
Director, Office of Financial and Insurance Industries
Director, Office of Digital Service Industries
Director, Office of Supply Chain, Professional and Business Services
Executive Director for National Travel and Tourism Office
Director, Office of Travel and Tourism Industries
Deputy Assistant Secretary for Trade Policy and Analysis
Director, Office of Standards and Investment Policy
Director, Office of Trade and Economic Analysis
Director, Office of Trade Negotiations and Analysis
Director, Office of Intellectual Property Rights
Deputy Assistant Secretary for Manufacturing
Director, Office of Energy and Environmental Industries
Director, Office of Transportation and Machinery
Director, Office of Health and Information Technologies
Deputy Assistant Secretary for Textiles, Consumer Goods, and Materials
Director, Office of Textiles and Appeal
Director, Office of Materials
Director, Office of Consumer Goods

Minority Business Development Agency

Chief Counsel
Freedom of Information Officer

National Institute of Standards and Technology

Director for Administration and Chief Financial Officer
Chief, Management and Organization Office
NIST Counsel

National Oceanic and Atmospheric Administration

Under Secretary
Deputy Under Secretary for Operations
Chief, Resource and Operations Management
Director, Office of Communications and External Affairs
Director, Office of Marine and Aviation Operations
General Counsel
Deputy General Counsel
Assistant Administrator for National Ocean Services
Deputy Assistant Administrator for National Ocean Services
Assistant Administrator for National Marine Fisheries Service
Deputy Assistant Administrator for Regulatory Programs for National Marine Fisheries Service
Assistant Administrator for National Weather Services
Deputy Assistant Administrator for National Weather Services
Assistant Administrator for National Environmental Satellite, Data, and Information Service
Deputy Assistant Administrator for National Environmental Satellite, Data, and Information Service
Assistant Administrator for Oceanic and Atmospheric Research
Deputy Assistant Administrator for Programs & Administration (Oceanic and Atmospheric Research)
Assistant Administrator for Program, Planning and Integration
Chief Administrative Officer
Chief Financial Officer
Chief Information Officer
Director, Acquisition and Grants Office
Deputy Director, Acquisition and Grants Office
Head of Contracting Offices, Acquisition and Grants Office
Director, Workforce Management Office
Senior Advisor for International Affairs
Director, Office of Legislation & Intergovernmental Affairs
Freedom of Information Officer

National Technical Information Service

Director
Deputy Director
Chief Financial Officer/Associate Director for Finance and Administration

National Telecommunications and Information Administration

Deputy Assistant Secretary
Chief Counsel
Deputy Chief Counsel

[FR Doc. 2014–03633 Filed 2–26–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–389]

Schedules of Controlled Substances: Rescheduling of Hydrocodone Combination Products From Schedule III to Schedule II

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to reschedule hydrocodone combination products from schedule III to schedule II of the Controlled Substances Act. This proposed action is based on a rescheduling recommendation from the Assistant Secretary for Health of the Department of Health and Human Services and an evaluation of all other relevant data by the DEA. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule II controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities, or possess) or propose to handle hydrocodone combination products.

DATES: Interested persons may file written comments on this proposal pursuant to 21 CFR 1308.43(g). Electronic comments must be submitted, and written comments must be postmarked, on or before April 28, 2014. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

Interested persons, defined as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' 21 CFR 1300.01, may file a request for hearing or waiver of an opportunity for a hearing or to participate in a hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45, 1316.47, 1316.48 or 1316.49, as applicable. Requests for hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before March 31, 2014.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–389'' on all electronic and written correspondence. The DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the Web page or attach a file for lengthier comments. Please go to *www.regulations.gov* and follow the on-line instructions at that site for submitting comments. Paper comments that duplicate electronic submissions are not necessary. Should you, however, wish to submit written comments, in lieu of electronic comments, they should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Ruth A. Carter, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record and will be made available for public inspection online at *www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments containing personal identifying information or confidential business information identified as directed above will be made publicly available in redacted form.

An electronic copy of this document and supplemental information to this proposed rule are available at *www.regulations.gov* for easy reference. If you wish to personally inspect the comments and materials received or the supporting documentation the DEA used in preparing the proposed action, these materials will be available for public inspection by appointment. To arrange a viewing, please see the ''For Further Information Contact'' paragraph above.

Request for Hearing, Notice of Appearance at Hearing, or Waiver of an Opportunity for a Hearing or To Participate in a Hearing

Pursuant to the provisions of the Controlled Substances Act (CSA), 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR Part 1316 subpart D. In accordance with 21 CFR 1308.44(a)–(c), requests for a hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing may be submitted only by interested persons, defined as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).'' 21 CFR 1300.01. Requests for hearing and notices of appearance must conform to the requirements of 21 CFR 1308.44(a) or (b), and 1316.47 or 1316.48 as applicable, and include a statement of the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver must conform to the requirements of 21 CFR 1308.44(c) and 1316.49, including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a)(1), the purpose and subject matter of a hearing held in relation to this rulemaking is restricted to: ''(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of [title 21] for the schedule in which such drug is to be placed * * *.'' Requests for a hearing, notices of appearance at a hearing, and waivers of an opportunity for a hearing or to participate in a hearing must be submitted to the DEA using the address information provided above.

Legal Authority

The DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purpose of this action. 21 U.S.C. 801–971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, controlled substances are classified into one of five schedules based upon their potential for abuse, their currently accepted medical use, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR Part 1308. 21 U.S.C. 812(a).

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, ''add to such a schedule or transfer between such schedules any drug or other substance if he (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by [21 U.S.C. 812(b)] for the schedule in which such drug is to be placed * * *.'' Pursuant to 28 CFR 0.100(b), the Attorney General has delegated this scheduling authority to the Administrator of the DEA.

The CSA provides that the scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS); or (3) on the petition of any interested party. 21 U.S.C. 811(a). This proposed action was initiated by a petition to reschedule hydrocodone combination products (HCPs) [1] from schedule III to schedule II of the CSA, and is supported by, *inter alia,* a recommendation from the Assistant Secretary for Health of the HHS.[2] If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions of schedule II controlled substances on any person who handles, or proposes to handle, HCPs.

Background

Hydrocodone was listed in schedule II of the CSA upon the enactment of the CSA in 1971. Public Law 91–513, 84 Stat. 1236, sec. 202(c), schedule II, paragraph (a), clause (1) (codified at 21 U.S.C. 812(c)); initially codified at 21 CFR 308.12(b)(1)(x) (36 FR 7776, April 24, 1971) (currently codified at 21 CFR 1308.12(b)(1)(vi)). At that time, HCPs in specified doses (containing no greater than 15 milligrams (mg) hydrocodone per dosage unit or not more than 300 mg hydrocodone per 100 milliliters) were listed in schedule III of the CSA when formulated with specified amounts of an isoquinoline alkaloid of opium or one or more therapeutically active nonnarcotic ingredients. Public Law 91–513, 84 Stat. 1236, sec. 202(c), schedule III, paragraph (d), clauses (3) and (4) (codified at 21 U.S.C. 812(c)); initially codified at 21 CFR 308.13(e)(3) and (4) (36 FR 7776, April 24, 1971) (currently codified at 21 CFR 1308.13(e)(1)(iii) and (iv)). Any other products that contain single-entity hydrocodone or combinations of hydrocodone and other substances outside the range of specified doses are listed in schedule II of the CSA.[3]

Proposed Determination To Transfer HCPs to Schedule II

Pursuant to 21 U.S.C. 811(a), proceedings to add a drug or substance to those controlled under the CSA, or to transfer a drug between schedules, may be initiated on the petition of any interested party. In response to a petition the DEA had received requesting that HCPs be controlled in schedule II of the CSA, in 2004 the DEA submitted a request to the HHS to provide the DEA with a scientific and medical evaluation of available information and a scheduling recommendation for HCPs, pursuant to 21 U.S.C 811(b) and (c). In 2008 the HHS provided to the DEA its recommendation that HCPs remain controlled in schedule III of the CSA. In response, in 2009, the DEA requested that the HHS re-evaluate their data and provide another scientific and medical evaluation and scheduling recommendation based on additional data and analysis.

On July 9, 2012, President Obama signed the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) (FDASIA). Section 1139 of the FDASIA [4] directed the Food and Drug Administration (FDA) to hold a public meeting to ''solicit advice and recommendations'' pertaining to the scientific and medical evaluation in connection with its scheduling recommendation to the DEA regarding drug products containing hydrocodone, combined with other analgesics or as an antitussive. Additionally the Secretary was required to solicit stakeholder input ''regarding the health benefits and risks, including the potential for abuse'' of hydrocodone combination products and the impact of up-scheduling of these products. Accordingly, on January 24–25, 2013, the FDA held a public Advisory Committee meeting at which the DEA made a presentation. The Advisory Committee included members with scientific and medical expertise in the subject of opioid abuse, and a patient representative. Members included representatives from National Institute on Drug Abuse (NIDA) and the Centers for Disease Control (CDC). There was also an opportunity for the public to provide comment. The Advisory Committee voted 19 to 10 in favor of recommending that hydrocodone combination products be placed into schedule II. According to the FDA, 768 comments were submitted by patients, patient groups, advocacy groups, and professional societies to the FDA.

Upon evaluating the scientific and medical evidence, along with the above considerations (e.g., recommendation of the Advisory Committee, the public comments, consideration of the health benefits and risks, and information about the impact of rescheduling) mandated by the FDASIA, the HHS on December 16, 2013, submitted to the Administrator of the DEA its scientific and medical evaluation (henceforth called HHS review) entitled, ''Basis for the Recommendation to Place Hydrocodone Combination Products in Schedule II of the Controlled Substances Act.'' Pursuant to 21 U.S.C. 811(b), this document contained an eight-factor analysis of the abuse potential of HCPs, along with the HHS's recommendation to control HCPs under schedule II of the CSA.

The HHS stated that the comments received during the open public hearing, to the docket, and the discussion of the Advisory Committee

[1] Hydrocodone combination products (HCPs) are pharmaceuticals containing specified doses of hydrocodone in combination with other drugs in specified amounts. These products are approved for marketing for the treatment of pain and for cough suppression.

[2] As set forth in a memorandum of understanding entered into by the HHS, the Food and Drug Administration (FDA), and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of the NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations.

[3] In the United States there are currently no approved, marketed, products containing hydrocodone in combination with other active ingredients that fall outside schedule III of the CSA. Further, until recently, there were no approved hydrocodone single-entity schedule II products. In Oct. 2013, the FDA approved Zohydro™ ER, a single-entity, extended release schedule II product. The sponsor of this product in a press release dated Oct. 25, 2013, stated that Zohydro™ ER will be launched in approximately four months. Accordingly, all of the historical data regarding hydrocodone from different national and regional databases that support this proposal should refer to HCPs only, regardless of whether the database utilizes the term ''hydrocodone'' or ''hydrocodone combination products.''

[4] FDASIA, SEC1139. SCHEDULING OF HYDROCODONE. (a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, if practicable, the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall hold a public meeting to solicit advice and recommendations to assist in conducting a scientific and medical evaluation in connection with a scheduling recommendation to the Drug Enforcement Administration regarding drug products containing hydrocodone, combined with other analgesics or as an antitussive. (b) STAKEHOLDER INPUT.—In conducting the evaluation under subsection (a), the Secretary shall solicit input from a variety of stakeholders including patients, health care providers, harm prevention experts, the National Institute on Drug Abuse, the Centers for Disease Control and Prevention, and the Drug Enforcement Administration regarding the health benefits and risks, including the potential for abuse and the impact of up-scheduling of these products.

members of the FDA Advisory Committee meeting provided support for its conclusion that individuals are taking HCPs in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; that there is significant diversion of HCPs; and that individuals are taking HCPs on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs. The HHS stated it has also given careful consideration to the fact that the members of the Advisory Committee voted 19 to 10 in favor of rescheduling HCPs from schedule III to schedule II under the CSA. The HHS considered the increasing trends, the public comments, the recommendation of the Advisory Committee, the health benefits and risks, and the information available about the impact of rescheduling, and concluded that HCPs have high potential for abuse.

Summary of Eight Factor Analyses

The DEA has reviewed the scientific and medical evaluation and scheduling recommendation provided by the HHS, and all other relevant data, and completed its own eight-factor review document pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as considered by the DEA in its proposed rescheduling action. Both the DEA and HHS analyses are available in their entirety in the public docket for this proposed rule (Docket No. DEA–389) at *www.regulations.gov* under ''Supporting and Related Material.'' Full analysis of, and citations to, information referenced in this summary may also be found in the supporting material.

1. The Drug's Actual or Relative Potential for Abuse

The term ''abuse'' is not defined in the CSA. However, the legislative history of the CSA provides the following criteria to determine whether a particular drug or substance has a potential for abuse: [5]

(a) Individuals are taking the drug or other substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; or

(b) There is a significant diversion of the drug or other substance from legitimate drug channels; or

(c) Individuals are taking the drug or other substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs; or

(d) The drug is so related in its action to a drug or other substance already listed as having a potential for abuse to make it likely that it will have the same potential for abuse as such substance, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

The DEA considered the HHS's evaluation and all other relevant data, including data related to the above mentioned criteria, and finds that:

(a) *Individuals are using HCPs in amounts sufficient to create a hazard to their health, to the safety of other individuals, or to the community.*

The HHS states that there are increasing trends in the adverse effects from abuse of HCPs, including emergency department (ED) visits, admissions to addiction treatment centers, and deaths in selected States. In 2011, HCPs were listed in 3,376 admissions for drug treatment as the primary drug of abuse and in 6,601 admissions listing HCPs in addition to other drugs in the Treatment Episode Data Set (TEDS).[6] HCPs are prescribed in an unprecedented manner and their total prescriptions exceed prescriptions for any other opioid analgesic; this characteristic drives their abuse potential and sets them apart from other opioid analgesics in terms of abuse risks.

Drug Abuse Warning Network (DAWN) [7] data indicate that abuse of HCPs, similar to oxycodone products [8] (schedule II), has been associated with large numbers of admissions to the ED. For example, in 2011 the total number of ED visits related to nonmedical use of HCPs and oxycodone products were 82,479 and 151,218, respectively.[9] The American Association of Poison Control Centers' National Poison Data System [10] (NPDS; formerly known as Toxic Exposure Surveillance System or TESS) reported that HCPs were involved in 30,792 and 29,391 annual toxic exposures in 2011 and 2012, respectively. The corresponding data for oxycodone products was 19,423 and 18,495. The majority of exposures for both drug products were for intentional reasons.[11]

The HHS mentions that nationwide estimates of overdose deaths due to HCPs cannot be quantified, but the available data for a limited number of States suggest that HCPs contribute to a substantial number of overdose deaths each year. According to the HHS, DAWN medical examiner (ME) data for five States from 2004 through 2010 reported an increase of 63% and 133% in deaths related to HCPs and oxycodone products, respectively. According to the Florida Department of Law Enforcement (FDLE),[12] HCPs have

[5] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No 91–1444, 91st Cong., Sess.1 (1970) reprinted in U.S.C.C.A.N. 4566, 4601.

[6] TEDS is a program coordinated and managed by the SAMHSA. This database includes information on treatment admissions that are routinely collected by states to monitor their individual substance abuse treatment systems. Thus, TEDS includes data primarily from treatment facilities that receive public funds. TEDS includes information on demographic variables including age, gender, race and ethnicity. TEDS also reports on the top three drugs of abuse at the time of admission. TEDS does not include all drugs that may have been abused prior to admission. States and jurisdictions can choose whether or not to report the detailed listing.

[7] The Drug Abuse Warning Network (DAWN) is a nationally representative public health surveillance system that continuously monitors drug-related visits to hospital EDs. The DAWN data are used to monitor trends in drug misuse and abuse in the United States. DAWN captures both ED visits that are directly caused by drugs and those in which drugs are a contributing factor but not the direct cause of the ED visit.

[8] Unless otherwise specified, for purposes of this document ''oxycodone products'' refers to both its single-entity and its combination products. All oxycodone products are schedule II controlled substances.

[9] In DAWN, nonmedical use of pharmaceuticals includes taking more than the prescribed dose of a prescription pharmaceutical or more than the recommended dose of an over-the-counter pharmaceutical or supplement; taking a pharmaceutical prescribed for another individual; deliberate poisoning with a pharmaceutical by another person; and documented misuse or abuse of a prescription drug, an over-the-counter pharmaceutical, or a dietary supplement.

[10] The American Association of Poison Control Centers (AAPCC) maintains the national database of information logged by the United States' 57 Poison Control Centers (PCCs). Case records in this database are from self-reported calls: they reflect only information provided when the public or healthcare professionals report an actual or potential exposure to a substance (e.g., an ingestion, inhalation, or topical exposure, etc.), or request information/educational materials. Exposures do not necessarily represent a poisoning or overdose. The AAPCC is not able to completely verify the accuracy of every report made to member centers. Additional exposures may go unreported to PCCs and data referenced from the AAPCC should not be construed to represent the complete incidence of national exposures to any substance(s).

[11] According to the AAPCC's NPDS database, ''intentional reasons'' include suspected suicide, misuse, abuse, and intentional unknown.

[12] The Florida Department of Law Enforcement Medical Examiners Commission publishes an Annual Medical Examiners Report, the Annual and Interim Drugs in Deceased Persons Report. In order for a death to be considered ''drug-related'' at least one drug identified must be in the decedent; each identified drug is a drug occurrence. The State's medical examiners were asked to distinguish between whether the drugs were the ''cause'' of death or merely ''present'' in the body at the time of death. A drug is only indicated as the cause of death when, after examining all evidence and the autopsy and toxicology results, the medical examiner determines the drug played a causal role in the death. It is not uncommon for a decedent to have multiple drugs listed as a cause of death.

been associated with large numbers of deaths in Florida. For example, in 2012, HCPs were associated with 777 deaths, while oxycodone products were associated with 1,426.

As summarized below, a review of drug abuse indicators for HCPs over the past several years further indicates that these products, similar to oxycodone products, are among the most widely diverted and abused drugs in the country and have high potential for abuse.

(b) *There is a significant diversion of HCPs from legitimate drug channels.*

According to forensic laboratory data as reported by the National Forensic Laboratory System [13] [14] (NFLIS) and the System to Retrieve Information from Drug Evidence [15] (STRIDE), HCPs, similar to oxycodone products, are among the top 10 most frequently encountered drugs. From 2002 through 2010, total cases (from both NFLIS and STRIDE) for both HCPs and oxycodone products gradually increased with some decline in 2011 and 2012. From 2002 through 2008, annual total cases involving HCPs (range: 9,106 in 2002 to 33,611 in 2008) consistently exceeded those for oxycodone products (range: 7,993 in 2002 to 28,343 in 2008). In 2009, total cases for HCPs (37,894) were similar to that for oxycodone products (37,680). From 2010 through 2012, total cases for oxycodone products (47,238 in 2010 and 41,915 in 2012) exceeded those for HCPs (39,261 in 2010 and 34,832 in 2012). The DEA has documented a large number of diversion and trafficking cases involving HCPs. DEA investigations conducted from 2005 through 2007 determined that HCPs were diverted from rogue Internet pharmacies.

(c) *Individuals are using HCPs on their own initiative rather than on the basis of medical advice.*

According to the data from the National Survey on Drug Use and Health [16] (NSDUH), the lifetime (i.e., ever used) users of HCPs for nonmedical purposes exceeded those for oxycodone products in the United States. For example, in 2004, over 17.7 million Americans age 12 years or older reported lifetime nonmedical use of HCPs as compared to over 11.9 million reported for oxycodone products. In 2012, the corresponding data for HCPs and oxycodone products were over 25.6 and 16 million, respectively. The NSDUH also reported large increases from 2004 through 2012 in the number of individuals using HCPs and oxycodone products for nonmedical purposes.

The past year initiates (i.e., the first use of a substance within the 12 months prior to the interview date) of HCPs exceeded those of oxycodone products from 2002 through 2005. Past year initiates for HCPs were over 1.3, 1.4, 1.3 and 1.3 million in 2002, 2003, 2004 and 2005, respectively. The corresponding data for oxycodone products were over 0.47, 0.5, 0.6 and 0.45 million. According to a report by the NSDUH, the combined data from 2002 through 2005 indicate that 57.7% of persons who first used pain relievers nonmedically in the past year used HCPs while 21.7% used oxycodone products. The NSDUH data from 2002 through 2006 also indicate that the lifetime users of HCPs have a higher propensity than that of lifetime users of oxycodone immediate release products (single-entity and combination products combined) to have used for nonmedical purposes any pain relievers in the past year.

According to the Monitoring the Future [17] (MTF) survey, from 2002 through 2011 the annual prevalence of nonmedical use of Vicodin®, an HCP, ranged from about 8% to 10.5% among high school seniors (12th graders) and exceeded that of OxyContin® (4% to 5.5%), an oxycodone extended release product. In 2012, the annual prevalence rate for nonmedical use of OxyContin® was 1.6%, 3.0%, and 4.3% among 8th, 10th and 12th graders, respectively. The corresponding rates for Vicodin® were 1.3%, 4.4% and 7.5%. According to the MTF, the annual prevalence of nonmedical use of Vicodin® in college students and young adults was 3.8% and 6.3% in 2012. The corresponding data for OxyContin® were 1.2% and 2.3%. The aforementioned data from drug abuse surveys (NSDUH and MTF) collectively indicate high prevalence of abuse of HCPs among Americans including students thereby indicating their high abuse potential.

(d) *HCPs are so related in their action to a drug or other substance already listed as having a potential for abuse to make it likely that they will have the same potential for abuse as such substance, thus making it reasonable to assume that there may be significant diversion from legitimate channels, significant use contrary to or without medical advice, or that they have a substantial capability of creating hazards to the health of the user or to the safety of the community.*

Hydrocodone possesses abuse liability effects substantially similar to morphine (schedule II) in both animals and humans. Hydrocodone, similar to morphine, is a μ opioid receptor agonist and shares pharmacological properties with morphine. Hydrocodone substitutes for morphine in animals trained to discriminate the presence and absence of morphine. Hydrocodone, similar to morphine, is self-administered by animals. Hydrocodone substitutes for morphine in opioid-dependent subjects. Clinical abuse liability studies have also demonstrated that HCPs (Hycodan® or hydrocodone in combination with acetaminophen) are similar to morphine with respect to physiological effects, subjective effects, and drug ''liking'' scores.

Hydrocodone/acetaminophen and oxycodone/acetaminophen combination products at equi-miotic doses, in general, produce similar profiles of psychopharmacological effects. These two opioid products produced prototypic opiate-like effects and psychomotor impairment of similar magnitudes.

Collectively these data demonstrate that HCPs have a high potential for abuse similar to other schedule II opioid analgesic drugs such as morphine and oxycodone products.

Although a medical examiner may determine a drug is present or detected in the decedent, the drug may not have played a causal role in the death. A decedent may have multiple drugs listed as present.

[13] The NFLIS is a program of the DEA, Office of Diversion Control. NFLIS systematically collects drug identification results and associated information from drug cases submitted to and analyzed by State and local forensic laboratories. NFLIS represents an important resource in monitoring illicit drug abuse and trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS is a comprehensive information system that includes data from forensic laboratories that handle approximately 90% of an estimated 1.0 million distinct annual State and local drug analysis cases. NFLIS includes drug chemistry results from completed analyses only.

[14] While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, Dec. 12, 2011.

[15] STRIDE is a database of drug exhibits sent to DEA laboratories for analysis. Exhibits from the database are from the DEA, other federal agencies, and local law enforcement agencies.

[16] The National Survey on Drug Use and Health, formerly known as the National Household Survey on Drug Abuse (NHSDA), is conducted annually by the Department of Health and Human Service's Substance Abuse and Mental Health Services Administration (SAMHSA). It is the primary source of estimates of the prevalence and incidence of nonmedical use of pharmaceutical drugs, illicit drugs, alcohol, and tobacco use in the United States. The survey is based on a nationally representative sample of the civilian, non-institutionalized population 12 years of age and older. The NSDUH provides yearly national and state level estimates of drug abuse, and includes prevalence estimates by lifetime (i.e., ever used), past year, and past year abuse or dependence.

[17] Monitoring the Future (MTF) is a national survey conducted by the Institute for Social Research at the University of Michigan under a grant from the NIDA that tracks drug use trends among American adolescents among the 8th, 10th, and 12th grades.

2. Scientific Evidence of the Drug's Pharmacological Effects, if Known

The HHS states that hydrocodone's pharmacological effects are similar to other μ opioid receptor agonists. It is effective as an antitussive agent and as an analgesic drug. Opioid analgesics have an important role in the management of pain. HCPs contain other nonnarcotic active ingredients such as acetaminophen, nonsteroidal anti-inflammatory drugs (NSAIDs) (aspirin and ibuprofen), chlorpheniramine or homatropine methylbromide. The mechanism of analgesic and antitussive effects of HCPs are different from those of nonnarcotic active ingredients present in HCPs. Acetaminophen and NSAIDs are less effective against severe pain, but have a recognized role in a variety of pain settings.

HCPs, similar to other opioid analgesics such as oxycodone products, are associated with a substantial number of overdose, suicide, abuse, and dependence reports. Overdose of HCPs, similar to other opioid analgesics, can lead to respiratory depression and death. Common adverse effects of NSAIDs include gastrointestinal, cardiovascular, renal and renovascular adverse events, and hepatic injury. Acetaminophen has low incidence of gastrointestinal side effects and is a common household analgesic available over the counter. Overdoses of acetaminophen can cause severe hepatic damage and death. Opioid/acetaminophen combination products are linked to numerous liver injuries.

3. The State of Current Scientific Knowledge Regarding the Drug or Other Substance

The HHS provided additional scientific information with focus on chemical and toxicological properties of hydrocodone and nonnarcotic components of HCPs. Hydrocodone is a semisynthetic opioid. The bitartrate salt form of hydrocodone is the main active component in all currently marketed HCPs. Nonnarcotic drugs present as co-ingredients are acetaminophen, aspirin, ibuprofen, chlorpheniramine or homatropine methylbromide. Hydrocodone and nonnarcotic drugs present in HCPs have potential to produce adverse effects.

4. Its History and Current Pattern of Abuse

Soon after introduction for clinical use, there were reports of hydrocodone abuse and addiction. By the 1950s, it was established that hydrocodone has an abuse liability similar to that of morphine. Data regarding the pharmacological effects of hydrocodone and its high potential for abuse were available prior to the enactment of the CSA and the placement of hydrocodone in schedule II reflects that knowledge base. In the United States, popularity of hydrocodone as a drug of abuse increased in the 1990s coinciding with its increased use as an analgesic. Currently HCPs are widely diverted and abused throughout the United States as demonstrated in national and regional drug-abuse-related databases. HCPs and oxycodone products (schedule II) are the two most common opioid analgesic products encountered by law enforcement.

Data from DEA field offices indicate that HCPs are diverted and are among the most sought after licit drugs in every geographic region of the country. DEA case investigations document numerous methods of diversion of HCPs. These methods involve drug theft, doctor shopping, fraudulent oral (call-in) prescriptions, fraudulent prescriptions, diversion by registrants, and various other drug trafficking schemes. HCPs are abused by individuals of diverse ages from adolescents to older populations. According to the NSDUH, in 2012, of the 37 million people in the United States who used pain relievers nonmedically in their lifetime, over 25.6 million (representing 9.9% of the United States population age 12 years or older) reported lifetime nonmedical use of HCPs. The MTF surveys indicate that from 2002 through 2012, 8.1% to 10.5% of high school seniors used Vicodin®, an HCP, for nonmedical purposes. In 2012, the annual prevalence of nonmedical use of Vicodin® in college students and young adults was 3.8% and 6.3%, respectively.

Several published epidemiological studies indicate that HCPs are widely abused. For example, a published epidemiological study reviewed prescription opioid abuse data collected by drug abuse experts (representatives of the nation's methadone programs, treatment centers, impaired health care professional programs, NIDA grantees and high-prescribing physicians) and found that HCPs are one of the most commonly abused prescription opioid drugs. Rates of abuse, expressed as cases per 100,000 population, were the highest for hydrocodone and extended release oxycodone products, while the rest of the opioid analgesics, including immediate release oxycodone products, had lower rates. Another published epidemiological study also indicates that the rate of intentional exposure (abuse, intentional misuse, suicide or intentional unknown) was highest for HCPs at 3.75 per 100,000 population followed by oxycodone products at 1.81 per 100,000. HCPs were involved in 55% of all of the intentional exposure cases, whereas oxycodone products were involved in 27%. In addition, published data on toxic exposure calls received by Texas poison centers from 1998 through 2009 showed that toxic exposure calls related to ingestion of the combination of HCPs, carisoprodol and alprazolam (commonly referred under street names such as ''Holy Trinity,'' ''Houston Cocktail,'' or ''Trio'') have increased from 2000 through 2007 with some decline in 2009.

5. The Scope, Duration, and Significance of Abuse

The HHS mentions that abuse of HCPs is considerable and is associated with considerable negative public health impact. The extent of nonmedical use of HCPs by adolescents is higher than for oxycodone products. These data are of significant concern as this may reflect particular risk for younger individuals. The HHS also states that because of the large number of prescriptions, large amounts of HCPs are potentially available for illicit use. Large numbers of adversely affected individuals and the severity of the adverse effects related to abuse of HCPs suggest that individuals are taking these products in amounts sufficient to create a hazard to their health and to the safety of other individuals and the community. Abuse of HCPs is associated with progressively increasing trends in serious adverse effects, including ED visits, admissions for abuse treatment, and in mortality data in selected States. The HHS cites the widespread prescriptions for HCPs as one of the reasons for these adverse outcomes. According to the HHS, data suggests that HCPs have high potential for abuse.

The DEA notes that initial reports of abuse of HCPs in the U.S. were published in the 1960s. Since the 1990s, the diversion and abuse of HCPs has escalated in the country. By the late 1990s, there were large increases in the diversion and abuse of HCPs. HCPs, similar to oxycodone products, are widely diverted and abused pharmaceutical opioid analgesics. HCPs are associated with significant illicit activity and abuse. Federal, State and local forensic laboratory data rank HCPs as one of the two most frequently encountered opioid pharmaceuticals in submissions to the laboratories. For example, in 2012, there were over 34,000 exhibits for HCPs (NFLIS). All DEA field divisions across the U.S. have reported that HCPs are among the most sought after pharmaceuticals.

In 2012, according to the poison control centers data (NPDS), there were over 29,390 toxic exposures involving HCPs. In 2002, there were over 25,000 DAWN ED visits associated with HCPs and it was ranked sixth among all controlled substances. According to DAWN, the nonmedical use related ED visits for HCPs were 86,258; 95,972; and 82,480 in 2009, 2010, and 2011, respectively. A number of data sources indicate that abuse of HCPs is associated with a large number of deaths. According to NSDUH, there were large numbers of lifetime and past year initiates of HCPs for nonmedical purposes and these numbers exceeded those of oxycodone. According to the MTF, about 8% to 10% of high school seniors reported nonmedical use of Vicodin®, an HCP, in recent years.

DEA case investigations document numerous methods of diversion of HCPs. These methods involve drug theft, doctor shopping, fraudulent oral (call-in) prescriptions, fraudulent prescriptions, diversion by registrants, and various other drug trafficking schemes.

6. What, if Any, Risk There Is to the Public Health

Despite the medical value of HCPs as antitussive and analgesic drugs, the misuse and abuse of these products present numerous risks to the public health. Many of the risk factors associated with these products are common risks shared with other μ opioid receptor agonists. These include the risks of developing tolerance, dependence and addiction, and the attendant problems associated with these risks including death. According to the CDC, from 1999 to 2010, the number of drug poisoning deaths [18] involving any opioid analgesic (e.g., oxycodone, methadone, or hydrocodone) markedly increased (over four-fold), from 4,030 to 16,651, and accounted for 43% of the 38,329 drug poisoning deaths and 39% of the 42,917 total poisoning deaths [19] in 2010. In 1999, opioid analgesics were involved in 24% of the 16,849 drug poisoning deaths and 20% of the 19,741 total poisoning deaths.

The HHS reviewed the HCPs related adverse events that were reported to the FDA Adverse Events Reporting System (FAERS) [20] from 1969 through 2012 and compared them to those associated with oxycodone products. The most common adverse events reported for HCPs included terms such as *complete suicide, intentional overdose, drug abuse, drug dependence, and drug abuser.*[21] The HHS found that both HCPs and oxycodone products are associated with substantial numbers of reports of overdose, suicide, abuse, and dependence reports. Both products have large numbers of adverse events reported that reflect abuse, misuse and injury due to inappropriate use. HCPs had fewer such reports than oxycodone products.

According to the DAWN, ED mentions associated with HCPs and oxycodone products are the highest among all opioid analgesics suggesting that both HCPs and oxycodone products have a great adverse risk to the public health. According to the HHS, DAWN ME data for five States from 2004 through 2010 reported an increase of 63% and 133% in deaths related to HCPs and oxycodone products, respectively. According to the FDLE, HCPs have been associated with large numbers of deaths in Florida in recent years. According to the NPDS annual reports, since 2002, annual figures for toxic exposures (within the category of opioid analgesic drugs) were the largest for HCPs, followed by oxycodone products (see summary of Factor 1 above). From 2006 through 2012, NPDS reported a total of 84,798 single substance exposures related to HCPs resulting in 195 deaths. The corresponding data for oxycodone products is 57,219 exposures and 173 deaths.

7. Its Psychic or Physiological Dependence Liability

According to the HHS, data from animal and human studies indicate the dependence potential of hydrocodone. The severe dependence potential is reflected by the number of individuals admitted to addiction treatment centers citing HCPs as their substance of abuse. The HHS also states that the treatment admissions linked to abuse of HCPs are increasing. The HHS concluded that abuse of HCPs may lead to severe psychological or physical dependence.

The DEA notes that as evident from the NSDUH data from 2002 through 2006, the propensity of the lifetime users of HCPs to develop substance use disorders on any pain relievers is higher than that of lifetime users of any pain relievers, as well as lifetime users of oxycodone products other than OxyContin® (i.e., oxycodone immediate release single-entity products and immediate release combination products). The FAERS data (from 1969 through August 28, 2008) indicate that the abuse and dependence reports associated with HCPs expressed as a percentage of all its adverse events (13.3%) were similar (both in magnitude and temporal distribution) to that for oxycodone products other than OxyContin® (13.6%).

The DEA also notes that according to several published epidemiological surveys and retrospective review of medical records of addiction treatment populations, HCPs are among the most abused opioid pharmaceuticals in prescription opioid dependent individuals in the country and are frequently mentioned as the primary drug of abuse in these subjects.

The above data collectively indicate that HCPs, similar to oxycodone products, have high potential to cause severe psychological or physiological dependence.

8. Whether the Substance Is an Immediate Precursor of a Substance Already Controlled Under the CSA

HCPs are not immediate precursors of a substance already controlled under the CSA, as defined in 21 U.S.C. 811(e).

Conclusion

Based on consideration of the scientific and medical evaluation and accompanying recommendation of the HHS, and based on the DEA's consideration of its own eight-factor analysis, the DEA finds that these facts and all other relevant data constitute substantial evidence of high potential for abuse of HCPs. As such, the DEA hereby proposes to transfer HCPs from

[18] Drug poisoning deaths include unintentional and intentional poisoning deaths resulting from overdoses of a drug, being given the wrong drug, using the drug in error, or using a drug inadvertently.

[19] Total poisoning deaths include those resulting from drugs, and those associated with solid or liquid biologics, gases or vapors, or other substances. Poisoning deaths are from all manners, including unintentional, suicide, homicide, and undetermined intent.

[20] FAERS is a computerized information database designed to support FDA's surveillance program for the post-marketing safety of all drug and therapeutic biologic products. FDA receives adverse drug reaction reports from manufacturers as required by regulation. Health care professionals and consumers voluntarily submit reports through the MedWatch program. All reported adverse terms are coded according to standardized international terminology, MedDRA (the Medical Dictionary for Regulatory Activities). These numbers are crude reports and may include duplicates. These reports were not individually reported to determine the association between the drug and the adverse event reported and may contain concomitant use of other medications.

[21] The top 20 most frequently reported adverse event terms associated with all hydrocodone reports (a report may contain more than one adverse event) received from 1969 to 2012 in the FAERS, in decreasing frequency, were: Completed suicide, overdose, cardio-respiratory arrest, toxicity to various agents, cardiac arrest, respiratory arrest, drug ineffective, intentional overdose, nausea, intentional drug misuse, vomiting, death, drug abuse, accidental overdose, pain, dizziness, medication error, drug dependence, headache, and drug abuser.

schedule III to schedule II under the CSA.

Proposed Determination of Appropriate Schedule

The CSA outlines the findings required to transfer a drug or other substance between schedules (I, II, III, IV, or V) of the CSA. 21 U.S.C. 811(a); 21 U.S.C. 812(b). After consideration of the analysis and rescheduling recommendation of the Assistant Secretary for Health of the HHS and review of available data, the Administrator of the DEA, pursuant to 21 U.S.C. 811(a) and 21 U.S.C. 812(b)(2), finds that:

1. HCPs have a high potential for abuse similar to that of schedule II substances;

2. HCPs have a currently accepted medical use in treatment in the United States. According to the HHS, several pharmaceutical products containing hydrocodone in combination with acetaminophen, aspirin, NSAIDS, and homatropine are approved by FDA for use as analgesics for pain relief and for the symptomatic relief of cough and upper respiratory symptoms associated with allergies and colds; and

3. Abuse of HCPs may lead to severe psychological or physical dependence similar to that of schedule II substances.

Based on these findings, the Administrator of the DEA concludes that HCPs warrant control in schedule II of the CSA. 21 U.S.C. 812(b)(2).

Requirements for Handling HCPs

If this rule is finalized as proposed, persons who handle HCPs would be subject to the CSA's schedule II regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

Registration. Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities with) HCPs, or who desires to handle HCPs, would be required to be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312.

Security. HCPs would be subject to schedule II security requirements and would need to be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b) and in accordance with 21 CFR 1301.71–1301.93.

Labeling and Packaging. All labels and labeling for commercial containers of HCPs would need to comply with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302.

Quotas. A quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 would be required in order to manufacture HCPs.

Inventory. Any person who becomes registered with the DEA after the effective date of the final rule would be required to take an initial inventory of all stocks of controlled substances (including HCPs) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant would be required to take a new inventory of all stocks of controlled substances on hand every two years, pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Records. Every DEA registrant would be required to maintain records with respect to HCPs pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR parts 1304, 1307, and 1312.

Reports. Every DEA registrant would be required to submit reports regarding HCPs to the Automation of Reports and Consolidated Order System (ARCOS) pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.33.

Orders for HCPs. Every DEA registrant who distributes HCPs would be required to comply with order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305.

Prescriptions. All prescriptions for HCPs would need to comply with 21 U.S.C. 829, and would be required to be issued in accordance with 21 CFR part 1306, and part 1311 subpart C.

Importation and Exportation. All importation and exportation of HCPs would need to be in compliance with 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312.

Liability. Any activity involving HCPs not authorized by, or in violation of, the CSA, would be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to Section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), has reviewed this proposed rule, and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. The purpose of this proposed rule is to place HCPs into schedule II of the CSA. No less restrictive measures (i.e., non-control or control in a lower schedule) would enable the DEA to meet its statutory obligation under the CSA.

HCPs are widely prescribed drugs for the treatment of pain and cough suppression. Handlers of HCPs primarily include manufacturers, distributors, exporters, pharmacies, practitioners, mid-level practitioners, and hospitals/clinics.[22] It is possible

[22] For purposes of performing regulatory analysis, the DEA uses the definition of a ''practitioner'' as a physician, veterinarian, or other individual licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he/she practices, to dispense a controlled substance in the

that other registrants, such as importers, researchers, analytical labs, teaching institutions, etc., also handle HCPs. However, based on its understanding of its registrant population, the DEA assumes for purposes of this analysis that for all business activities other than manufacturers, distributors, exporters, pharmacies, practitioners, mid-level practitioners, and hospitals/clinics, that the volume of HCPs handled is nominal, and therefore *de minimis* to the economic impact determination of this proposed rescheduling action.

Because HCPs are so widely prescribed, for the purposes of this analysis, the DEA conservatively assumes all distributors, exporters, pharmacies, practitioners, mid-level practitioners, and hospitals/clinics currently registered with the DEA to handle schedule III controlled substances are also handlers of HCPs. The DEA estimated the number of manufacturers and exporters handling HCPs directly from DEA records. In total, the DEA estimates that nearly 1.5 million controlled substance registrations, representing approximately 376,189 entities, would be affected by this rule.

The DEA does not collect data on company size of its registrants. The DEA used DEA records and multiple subscription-based and public data sources to relate the number of registrations to the number of entities and the number of entities that are small entities. The DEA estimates that of the 376,189 entities that would be affected by this rule, 366,351 are ''small entities'' in accordance with the RFA and Small Business Administration size standards. 5 U.S.C. 601(6); 15 U.S.C. 632.[23]

The DEA examined the registration, security (including storage), labeling and packaging, quota, inventory, recordkeeping and reporting, ordering, prescribing, importing, exporting, and disposal requirements for the 366,351 small entities estimated to be affected by the proposed rule. The DEA estimates that only the physical security requirements will have material economic impact and such impacts will be limited to manufacturers, exporters, and distributors. Many manufacturers and exporters are likely to have sufficient space in their existing vaults to accommodate HCPs. However, the DEA understands that some manufacturers, exporters, and distributors will need to build new vaults or expand existing vaults to store HCPs in compliance with schedule II controlled substance physical security requirements. Due to the uniqueness of each business, the DEA made assumptions based on research and institutional knowledge of its registrant community to quantify the costs associated with physical security requirements for manufacturers, exporters and distributors.

The DEA estimates there will be significant economic impact on 1 (2.0%) of the affected 50 small business manufacturers, and 54 (7.9%) of the affected 683 small business distributors. The DEA estimates no significant impact on the remaining affected 4 small business exporters, 50,774 small business pharmacies, or 314,840 small business practitioners/mid-level practitioners/hospitals/clinics. In summary, 55 of the 366,351 (0.015%) affected small entities are estimated to experience significant impact, (i.e., incur costs greater than 1% of annual revenue) if the proposed rule were finalized. The percentage of small entities with significant economic impact is below the 30% threshold for all registrant business activities. The DEA's assessment of economic impact by size category indicates that the proposed rule will not have a significant effect on a substantial number of these small entities.

The DEA's assessment of economic impact by size category indicates that the proposed rule to reschedule HCPs as schedule II controlled substances will not have a significant economic impact on a substantial number of small entities. The DEA will consider written comments regarding the DEA's economic analysis of the impact of such rescheduling, including this certification, and requests that commenters describe the specific nature of any impact on small entities and provide empirical data to illustrate the extent of such impact.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the ''Regulatory Flexibility Act'' section above, the DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*), that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of the UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended to read as follows:

PART 1308—SCHEDULES CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

§ 1308.13 [Amended]

■ 2. Amend § 1308.13 by removing paragraphs (e)(1)(iii) and (iv) and redesignating paragraphs (e)(1)(v) through (viii) as (e)(1)(iii) through (v), respectively.

Dated: February 21, 2014.

Michele M. Leonhart,

Administrator.

[FR Doc. 2014–04333 Filed 2–26–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50 and 58

[Docket No. FR–5616–P–01]

RIN 2506–AC34

Environmental Compliance Recordkeeping Requirements

AGENCY: Office of Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing the format used for conducting the required environmental reviews for HUD program and policy actions. HUD's current regulations require that HUD staff document part 50 environmental review compliance using form HUD–

course of professional practice, but does not include a pharmacist, pharmacy, or hospital (or other person other than an individual).

[23] The estimated break-down is as follows: 50 manufacturers, 4 exporters, 683 distributors, 50,774 pharmacies, and 314,840 practitioners/mid-level practitioners/hospitals/clinics.

4128. Recipients receiving HUD assistance and other entities responsible for conducting part 58 environmental reviews (''responsible entities'') are currently allowed to use either HUD-recommended formats or develop equivalent formats for documenting environmental review compliance.

The reference to a specific form number in part 50 restricts HUD's ability to adopt alternative form designations and forms, while authorizing the use of alternate forms in part 58 makes it difficult for HUD to assess, compare, and collect data on responsible entities' environmental review records. Despite being applicable to different parties, environmental review responsibilities under parts 50 and 58 are substantively similar. In light of that, the proposed rule would give the Departmental Environmental Clearance Officer (DECO) the authority to create one standardized format for use in both part 50 and part 58 reviews and authorize exceptions, thereby eliminating unnecessary distinctions between reviews completed by HUD employees and responsible entities.

This proposed rule would also make a technical amendment to part 58 by making the regulations consistent with the ''Environmental Assessment'' definition provided in the Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA).

DATES: *Comment Due Date:* April 28, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Danielle Schopp, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7250, Washington, DC 20410; telephone number 202–402–4442 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

NEPA and related authorities [1] require the review of potential environmental impacts of, and the preparation of environmental reviews for, Federal policy and program actions. HUD's regulations at 24 CFR part 50 and part 58 implement these environmental requirements. HUD's regulations at 24 CFR part 50, entitled ''Protection and Enhancement of Environmental Quality,'' govern the environmental reviews performed by HUD for its policies and programs. The regulations at 24 CFR part 58, entitled ''Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities,'' prescribe the requirements governing environmental reviews performed by recipients of HUD assistance and other responsible entities that assume HUD's environmental responsibilities in applicable HUD programs. Both 24 CFR parts 50 and 58 address the formats used for preparing and documenting the required environmental reviews.

The part 50 regulations at § 50.20(a) and § 50.31(a) require HUD employees to document compliance with the environmental requirements through use of form HUD–4128. The reference to a single form number in part 50 restricts HUD's ability to issue a new form with a different designation or other forms. Updating the regulations to reflect new forms would require the use of potentially lengthy notice-and-comment rulemaking procedures. Such procedures would be redundant because new forms are already subject to the notice-and-comment process of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA).

The part 58 regulations at § 58.38 and § 58.40 allow entities assuming HUD environmental review responsibilities to use a HUD-recommended format or develop an equivalent format for preparing and documenting an environmental review. As a result, entities use a variety of formats. This sometimes makes it difficult for HUD and interested members of the public to assess compliance and prevents HUD from collecting reliable data.

II. This Proposed Rule

This proposed rule would address these concerns by revising the regulations addressing the formats used for environmental reviews. First, this proposed rule would amend 24 CFR part 50 by removing the reference to the form HUD–4128. The revised regulations would instead require that HUD staff use a format approved by the DECO to prepare and document the required environmental reviews. Applicable environmental authorities vary from program to program. Accordingly, the DECO may prescribe alternative formats as necessary to meet specific program needs. This rule is not proposing to change or replace form HUD–4128. Such actions would more appropriately be taken through the process for approval of collections of information and recordkeeping requirements under the PRA.

This proposed rule would also amend 24 CFR part 58 by establishing

[1] See 24 CFR 50.4 and 24 CFR 58.5–6 for a listing of these Federal laws and authorities.

uniformity in the formats used by entities assuming HUD's environmental review responsibilities. Specifically, the proposed rule would require these entities to use a format prescribed by the DECO. As for environmental reviews under part 50, the DECO may prescribe alternative formats as necessary to meet specific program needs. This rule is not prescribing the format; rather, such paperwork requirements will be established through the PRA notice-and-comment process.

This proposed rule would also make a technical amendment to § 58.40 for consistency with the CEQ regulations implementing NEPA's environmental assessment requirements. The regulations issued by the CEQ at 40 CFR parts 1500–1508 establish the basic procedural requirements for compliance with NEPA by all Federal agencies. When responsible entities assume HUD's environmental review responsibilities, they must follow the CEQ environmental assessment regulations at 40 CFR 1508.9. HUD's procedures mirror the CEQ procedures for performing an environmental assessment, but for clarity HUD is incorporating the CEQ's language for completing the environmental assessments in HUD's regulations.

III. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

As discussed above in this preamble, the proposed rule would revise the regulations governing the format used for conducting the required environmental reviews for HUD program and policy actions. Consistent with the goals of Executive Order 13563, the proposed amendments would simplify and standardize the format requirements. Changes to the format would now be made through the PRA notice-and-comment process, the more appropriate forum for such changes. In addition, the proposed rule would make a technical amendment to include in HUD's regulations the procedures a responsible entity must complete when preparing an environmental assessment already required under the CEQ regulations. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by OMB.

Paperwork Reduction Act

The information collection requirements for part 50 and part 58 contained in this proposed rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) and assigned OMB control numbers 2506–0177 and 2506–0087, respectively. In accordance with the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would not add any new substantive regulatory obligations on participants in HUD programs. The current regulations already require that entities maintain environmental review records in accordance with HUD-recommended formats or equivalent formats, and HUD is merely standardizing the recording format. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Review

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the NEPA.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

List of Subjects

24 CFR Part 50

Environmental quality, Environmental protection, Environmental review policy and procedures, Environmental assessment, Environmental impact statement, Compliance record.

24 CFR Part 58

Environmental protection, Community Development Block Grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to revise 24 CFR parts 50 and 58, to read as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 4321–4335; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

■ 2. In § 50.18, designate the undesignated paragraph as paragraph (b) and add new paragraph (a) to read as follows:

§ 50.18 General.

(a) The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format to be used to document compliance with NEPA and the Federal laws and authorities cited in § 50.4 where their applicability is indicated below. The DECO may prescribe alternative formats as necessary to meet specific program needs.

* * * * *

■ 3. Revise § 50.20(a) to read as follows:

§ 50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.

(a) The following actions, activities, and programs are categorically excluded from the NEPA requirements for further review in an Environmental Assessment or an Environmental Impact Statement as set forth in this part. They are not excluded from individual compliance requirements of other environmental statutes, Executive orders, and HUD standards cited in § 50.4, where appropriate. Where the responsible official determines that any proposed action identified below may have an environmental effect because of extraordinary circumstances (40 CFR 1508.4), the requirements for further review under NEPA shall apply (see paragraph (b) of this section).

* * * * *

■ 4. Revise § 50.31(a) to read as follows:

§ 50.31 The EA.

(a) The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format used for the environmental analysis and documentation of projects and activities under subpart E. The DECO may prescribe alternative formats as is necessary to meet specific program needs.

* * * * *

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

■ 5. The authority citation for part 58 is revised to read as follows:

Authority: 12 U.S.C. 1707 note, 1715z–13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321–4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105–276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

■ 6. In § 58.38, revise the introductory text to read as follows:

§ 58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the ''Environmental Review Record'' (ERR) and shall be available for public review. The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format that the responsible entity shall use to prepare the ERR. The DECO may prescribe alternative formats as is necessary to meet specific program needs.

* * * * *

■ 7. In § 58.40, revise the introductory text and paragraph (e) to read as follows:

§ 58.40 Preparing the environmental assessment.

The DECO shall establish a prescribed format that the responsible entity shall use to prepare the EA. The DECO may prescribe alternative formats as is necessary to meet specific program needs. In preparing an EA for a particular proposed project or other action, the responsible entity must:

* * * * *

(e) Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

* * * * *

Dated: January 31, 2014.

Shaun Donovan,

Secretary.

[FR Doc. 2014–04206 Filed 2–26–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0024]

32 CFR Part 311

Privacy Act; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary of Defense (OSD) is amending its regulations to exempt portions of a new system of records from certain provisions of the Privacy Act. Specifically, the Department proposes to exempt portions of DMDC 16 DoD, entitled ''Interoperability Layer Service (IoLS)'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. In 2008, the U.S. Congress passed legislation that obligated the Secretary of Defense to develop access standards for visitors applicable to all military installations in the U.S. The Department of Defense (DoD) developed a visitor system to manage multiple databases that are capable of identifying individuals seeking access to DoD installations who may be criminal and/or security threats. The purpose of the vetting system is to screen individuals wishing to enter a DoD facility, to include those who have been previously given authority to access DoD installations, against the FBI National Crime Information Center (NCIC) Wanted Person File. The NCIC has a properly documented exemption rule and to the extent that portions of these exempt records may become part of IoLS, OSD hereby claims the same exemptions for the records as claimed at their source (JUSTICE/FBI–001, National Crime Information Center (NCIC)).

DATES: Comments must be received on or before April 28, 2014 to be considered by this agency.

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

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

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

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

SUPPLEMENTARY INFORMATION:

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

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

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

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

Public Law 95–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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

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

Executive Order 13132, ''Federalism''

Executive Order 13132 requires regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. The amendments will not have any substantial direct effects on state and local governments within the meaning of the EO. Therefore, no Federalism assessment is required.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is proposed to be amended to read as follows:

PART 311—[AMENDED]

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 522a).

■ 2. Section 311.8 is amended by adding paragraph (c)(21) as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(21) System identifier and name: DMDC 16 DoD, Interoperability Layer Service (IoLS).

(i) Exemption: To the extent that copies of exempt records from JUSTICE/FBI–001, National Crime Information Center (NCIC) are entered into the Interoperability Layer Systems records, the OSD hereby claims the same exemptions, (j)(2) and (k)(3), for the records as claimed in JUSTICE/FBI–001, National Crime Information Center (NCIC). Pursuant to 5 U.S.C. 552a portions of this system that fall within (j)(2) and (k)(3) are exempt from the following provisions of 5 U.S.C. 552a, section (c)(3) and (4); (d); (e)(1) through (3); (e)(4)(G) through (I); (e)(5) and (8); (f); and (g) (as applicable) of the Act.

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

(iii) Reasons: (A) From subsection (c)(3) because making available to a record subject the accounting of disclosure from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a known or suspected terrorist by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(B) From subsection (c)(4) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(C) From subsection (d) because these provisions concern individual access to and amendment of certain records contained in this system, including law enforcement, counterterrorism, investigatory, and intelligence records. Compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism, law enforcement, or intelligence investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(D) From subsection (e)(1) because it is not always possible to determine what information is relevant and necessary to complete an identity comparison between the individual seeking access and a known or suspected terrorist. Also, because DoD and other agencies may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(E) From subsection (e)(2) because application of this provision could present a serious impediment to counterterrorism, law enforcement, or intelligence efforts in that it would put the subject of an investigation, study, or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, law enforcement, or intelligence investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations, it is not feasible to rely upon information furnished by the individual concerning his own activities.

(F) From subsection (e)(3) to the extent that this subsection is interpreted to require DoD to provide notice to an individual if DoD or another agency receives or collects information about that individual during an investigation or from a third party. Should this subsection be so interpreted, exemption

from this provision is necessary to avoid impeding counterterrorism, law enforcement, or intelligence efforts by putting the subject of an investigation, study, or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede the activity.

(G) From subsection (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(H) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness could unfairly hamper law enforcement processes. It is the nature of law enforcement to uncover the commission of illegal acts at diverse stages. It is often impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further details are brought to light.

(I) From subsection (e)(8) because the requirement to serve notice on an individual when a record is disclosed under compulsory legal process could unfairly hamper law enforcement processes. It is the nature of law enforcement that there are instances where compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses.

(J) From subsection (f) because requiring the Agency to grant access to records and establishing agency rules for amendment of records would unfairly impede the agency's law enforcement mission. To require the confirmation or denial of the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to the existence of an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of the record, disclosure of the record to the subject, and record amendment procedures.

(K) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: February 21, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–04273 Filed 2–26–14; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2013–0645; FRL–9907–07–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Transportation Conformity Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision submitted by the State of Wisconsin on August 1, 2013, for the purpose of establishing transportation conformity (conformity) criteria and procedures related to interagency consultation, and the enforceability of certain transportation related control and mitigation measures. This revision replaces Wisconsin's conformity State Implementaion Plan (SIP) that was approved on August 27, 1996.

DATES: Comments must be received on or before March 31, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0645, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving Wisconsin's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 10, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–04167 Filed 2–26–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

14 CFR Chapters I, II, III

23 CFR Chapters I, II, III

46 CFR Chapter II

48 CFR Chapter 12

49 CFR Chapters I, II, III, V, VI, VII, VIII, X, XI

[Docket No. DOT–OST–2014–0024]

Next Phase of the Regulatory Review of Existing DOT Regulations

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' the Department of Transportation (Department, DOT, or we) is conducting a review of its existing regulations to evaluate their continued validity and determine whether they are crafted effectively to solve current problems. On February 16, 2011, the Department began a process to review existing regulations, which included a public meeting and various other opportunities to solicit public comments. That process resulted in a Plan for Implementation of Executive Order 13563 that was released in August 2011. Additionally, the Department has regularly updated the list of regulations that are under review or further study and provided updates on timing of the review. The latest update was released in January 2014 and can be found at *http://www.reginfo.gov.* (See Appendix D of the Department's semi-annual Regulatory Agenda.) In continuing this effort, the Department again invites the public to comment on the next phase of its retrospective regulatory review process.

DATES: Comments should be received on or before March 31, 2014. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments to Docket No. DOT–OST–2014–0024 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed envelope or postcard.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. ET., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* and click on the ''read comments'' box in the upper right-hand side of the screen. Then, in the ''Keyword'' box insert ''DOT–OST–2014–0024'' and click ''Search.'' Next, click the ''Open Docket Folder'' in the ''Actions'' column. Finally, in the ''Title'' column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathryn Sinniger, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 493–0908. *Email: kathryn.sinniger@dot.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 13563

On January 18, 2011, President Obama issued Executive Order 13563, which outlined a plan to improve regulation and regulatory review (76 FR 3821, Jan. 21, 2011). Executive Order 13563 reaffirms and builds upon governing principles of contemporary regulatory review, including Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, Oct. 4, 1993), by requiring Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness. The President's plan recognizes that these principles should guide the Federal government's approach not only to new regulation, but to existing ones as well. To that end, Executive Order 13563 requires agencies to review existing rules to determine if they are outmoded, ineffective, insufficient, or excessively burdensome.

To facilitate this review, Executive Order 13563 requires each agency to develop and submit to the Office of Management and Budget's Office of Information and Regulatory Affairs a preliminary plan for retrospectively analyzing existing rules. The Department complied with this requirement with the release of a Plan for Implementation of Executive Order 13563, available on the Department's Web site for regulations at *http://www.dot.gov/regulations.* As Executive Order 13563 reaffirms, the regulatory process must be transparent and provide opportunities for public participation. The Department particularly believes, given its broad regulatory responsibility, this participation should extend to the Department's obligations under the Executive Order to continue the retrospective review of existing regulations. Continued meaningful review requires continued input from those affected by the Department's regulations.

DOT's Regulatory Responsibility

The mission of the Department is to serve the United States by ensuring a safe, fast, efficient, accessible, and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future. The Department carries out its mission through the Office of the Secretary (OST) and the following operating administrations (OAs): Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); Federal Transit Administration (FTA); Maritime Administration (MARAD); National Highway Traffic Safety Administration (NHTSA); Pipeline and Hazardous Materials Safety Administration (PHMSA); and St. Lawrence Seaway Development Corporation (SLSDC). Although the Surface Transportation Board (STB) is a component of DOT, it is organizationally independent and, as a result, the Department does not have responsibility for the STB's regulatory agenda.

DOT has statutory responsibility for a wide range of regulations. For example, DOT regulates safety issues in the aviation, motor carrier, railroad, motor vehicle, commercial space, and pipeline transportation areas. DOT regulates aviation consumer and economic issues, and provides financial assistance and

writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, and motor transportation and vehicle safety. DOT writes regulations carrying out such disparate statutes as the Americans with Disabilities Act and the Uniform Time Act. Finally, DOT has responsibility for developing policies that implement a wide range of regulations that govern programs such as acquisition and grants management, access for people with disabilities, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, security, and the use of aircraft and vehicles.

DOT's Existing Process for Reviewing Rules

The Department has long recognized that there should be no more regulations than necessary and those that are issued should be simple, comprehensible, and impose only as much burden as is necessary. Likewise, the Department understands that review and revision of existing regulations is essential to ensure that they continue to meet the needs for which they originally were designed and that they remain cost-effective and cost justified. The Department regularly makes a conscientious effort to review its rules in accordance with the Department's 1979 Regulatory Policies and Procedures (44 FR 11034, Feb. 26, 1979), Executive Order 12866, and section 610 of the Regulatory Flexibility Act, 5 U.S.C. 610.

In 2011, in response to Executive Order 13563, the Department decided to improve its plan by adding special oversight processes within the Department; encouraging effective and timely reviews, including providing additional guidance on particular problems that warrant review; and expanding opportunities for public participation. The Department merged the results of the retrospective review of existing rules that was initially conducted pursuant to Executive Order 13563 and the other special reviews that were to be conducted, into a 10-year review plan to provide a simpler resource for the public and a more effective tool for oversight and management of the Department's retrospective reviews of rules.

The Department's 2011 final plan listed 79 existing rules for which the Department had already undertaken or proposed actions that promise significant savings in terms of money and burden hours. In addition, the Department identified 56 other rules with potential savings, and we committed to further study of public commenter recommendations further before deciding on the appropriate action. You can find this list of rules as Attachment 2 to our 2011 final plan, located at *http://www.dot.gov/regulations/retrospective-review-and-analysis-existing-rules.*

Public Participation and Request for Comments

DOT is an active regulatory agency with broad regulatory responsibilities, thus a robust regulatory program is essential to our mission. For this reason, it is all the more important that we maintain a consistent culture of retrospective review and analysis. We have determined that it is time to begin a second round of retrospective review, even as the first round of reviews begun under Executive Order 13563 are being completed.

Unlike the first round of retrospective review under Executive Order 13563, where the Department solicited suggestions for specific rules that should be on the list of candidate rules for review, the Department is looking for your suggestions on how this round should be managed and your reasons for your suggestions.

1. Should DOT simply publish a notice in the **Federal Register** asking for suggestions for specific existing rules to be reviewed, as we did during the initial round?

2. Should DOT focus on the 56 rules identified in the 2011 plan as having potential savings? Or are there any particular rules from that list that should be?

3. Should DOT publish a notice and request for comment in the **Federal Register**—

a. Focusing instead on the existing regulations of one or more specific OAs? If so, which OA(s) and why?

b. Focusing instead on one or more cross-cutting issues such as access rules or drug and alcohol testing? If so, which cross-cutting issues and why?

c. Focus on a combination of one or more specific OA(s) and specific cross-cutting issue(s)? If so, which and why?

4. One other idea would be to hold a series of listening sessions announced in the **Federal Register**, each one tailored to a specific OA or cross-cutting issue. Ideas developed at these sessions could be developed at additional public workshops (e.g., if the OA has an authorized advisory committee (such as FRA's Railroad Safety Advisory Committee chartered under the Federal Advisory Committee Act), at workshops under the auspices of that advisory committee), and/or through publication of a notice and request for comment in the **Federal Register**, before the idea is included in a DOT draft preliminary retrospective review plan with a request for comment. We would like your thoughts on whether this idea is preferable, and if so how much time should be allowed for each stage (listening sessions, additional public workshops, and/or publication of a notice and request for comment on the suggestions for retrospective review). Please send suggestions as to which OAs and/or cross-cutting issues could benefit from this more in-depth retrospective review, including your rationale.

5. We also seek other alternatives for how to implement this second round of retrospective review and your reason for supporting the alternative(s).

Regulatory Notices

Privacy Act: Anyone may search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://www.gpoaccess.gov/fr/browse.html* and browse under 2000 for April 11, looking under the heading ''Department of Transportation.''

Authority: 5 U.S.C. 610; E.O. 13563, 76 FR 3821, Jan. 21, 2011; E.O. 12866, 58 FR 51735, Oct. 4, 1993.

Issued on February 19, 2014, in Washington, DC.

Kathryn B. Thomson,

Acting General Counsel.

[FR Doc. 2014–04008 Filed 2–26–14; 8:45 am]

BILLING CODE 4910–9X–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 01–229 and 01–231; Report No. 2994]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: A Petition for Reconsideration has been filed in the Commission's Rulemaking proceedings by Edward Czelada.

DATES: Oppositions to the Petition must be filed on or before March 14, 2014.

Replies to an opposition must be filed on or before March 24, 2014.

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

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, 202–418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 2994, released December 19, 2013. The full text of Report No. 2994 is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160).

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Caseville and Pigeon, Michigan) (MM Docket No. 01–229).

In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Harbor Beach and Lexington, Michigan) (MM Docket No. 01–231).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–04325 Filed 2–26–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0131; FXES11130900000–145–FF09E42000]

RIN 1018–AW04

Endangered and Threatened Wildlife and Plants; Removing Oenothera avita ssp. eurekensis and Swallenia alexandrae From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove *Oenothera avita* ssp. *eurekensis* (now accepted as *Oenothera californica* subsp. *eurekensis,* with a common name of Eureka Valley evening-primrose, Eureka evening-primrose, or Eureka Dunes evening-primrose) and *Swallenia alexandrae* (with a common name of Eureka dune grass or Eureka Valley dune grass) from the Federal List of Endangered and Threatened Plants. This action is based on a review of the best available scientific and commercial information, which indicates that both species no longer meet the definition of an endangered species, and further do not meet the definition of a threatened species, under the Endangered Species Act of 1973, as amended (Act). This proposed rule, if made final, would remove these plants from the List of Endangered and Threatened Plants. This document also constitutes our 12-month finding on a petition to remove both species from the List of Endangered and Threatened Plants. We are seeking information and comments from the public regarding this proposed rule.

DATES: We will accept comments received or postmarked on or before April 28, 2014. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by April 14, 2014.

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter Docket No. FWS–R8–ES–2013–0131, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2013–0131; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

Document availability: You may obtain copies of the proposed rule and related documents (including a copy of the Background Information document (Service 2014, entire) referenced throughout this proposed rule) at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0131, or at the Ventura Fish and Wildlife Office's Web site at *http://www.fws.gov/ventura/.*

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Deputy Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766; facsimile 805–644–3958. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Species addressed. Oenothera avita ssp. *eurekensis* (now accepted as *Oenothera californica* subsp. *eurekensis;* Eureka Valley evening-primrose) and *Swallenia alexandrae* (Eureka dune grass) are endemic to three dune systems in the Eureka Valley, Inyo County, California. Eureka Valley falls within federally designated wilderness within Death Valley National Park, and is managed accordingly by the National Park Service (Park Service).

Purpose of the Regulatory Action. This document constitutes our 12-month finding in response to a petition to delist Eureka Valley evening-primrose and Eureka dune grass, and we are proposing to remove both plants from the Federal List of Endangered and Threatened Plants.

Basis for the Regulatory Action. Under the Endangered Species Act of 1973, we may be petitioned to list, delist, or reclassify a species. Under the Act, a species may be determined to be an endangered species or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We must consider the same factors in delisting a species. We may delist a species if the best scientific and commercial data indicate the species is neither threatened nor endangered for one or more of the following reasons: (1) The species is extinct, (2) The species has recovered and is no longer endangered or threatened, or (3) The original scientific data used at the time the species was classified were in error.

The primary threat to Eureka Valley evening-primrose and Eureka dune grass at the time of listing was off-highway vehicle (OHV) activity at Eureka Dunes (43 FR 17910; April 26, 1978); although not specifically stated in the final listing rule, this also presumes a lesser degree of impacts from camping that were associated with OHV activity on and around the dunes. Habitat protections and ongoing management by the Bureau of Land Management (BLM; up until

1994) and Park Service (since 1994) since listing have resulted in amelioration of the threats identified at listing. Of the remaining potential impacts, which consist of herbivory, seed predation, stochastic events, climate change, and (specifically for Eureka Valley evening-primrose) competition with Russian thistle, one or more may be causing stress to a population (or portions of a population) of either species. However, the stress caused by those potential impacts are not of sufficient imminence, intensity, or magnitude to rise to the level that they would cause either Eureka Valley evening-primrose or Eureka dune grass to be a threatened species (i.e., likely to become an endangered species within the foreseeable future).

Information Requested

We intend any final action resulting from this proposal will be based on the best scientific and commercial information available, and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, tribes, the scientific community, industry, or other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Reasons why we should or should not delist Eureka Valley evening-primrose and Eureka dune grass under the Act (16 U.S.C. 1531 *et seq.*).

(2) New biological or other relevant data concerning any threat (or lack thereof) to these plants.

(3) New information concerning the range, distribution, and population size of both Eureka Valley evening-primrose and Eureka dune grass. Additionally, we are seeking information to aid in determining trends for both species, particularly in light of varying methodologies employed since listing (e.g., transects, photopoints, grid systems), the need to extrapolate anticipated future rangewide trends, and the need to utilize the best methodologies possible for future monitoring, including post-delisting monitoring.

(4) New information on the effects of other potential threat factors, including changes in the distribution and abundance of populations, disease, predation by small mammals, or negative effects resulting from the presence of invasive, nonnative species (particularly *Salsola* spp. (Russian thistle)).

(5) New information and data on the current or planned activities within the ranges of Eureka Valley evening-primrose and Eureka dune grass that may adversely affect or benefit the plants.

(6) New information or data on the projected and reasonably likely impacts to Eureka Valley evening-primrose and Eureka dune grass associated with climate change.

(7) What should be included in a post-delisting monitoring plan for the species, including length of monitoring period, monitoring intervals, what monitoring techniques are appropriate, triggers and thresholds for additional monitoring or initiating status reviews, and so forth.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received no later than April 14, 2014. Send your request to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. A discussion of additional information related to this proposed rule—including (but not limited to) information on life history, taxonomy, genetics, seed bank ecology, survivorship and demography, rangewide distribution, and abundance surveys—is presented in the Background Information document (Service 2014) available at *http://www.regulations.gov* (Docket No. FWS–R8–ES–2013–0131). The purpose of peer review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. The peer reviewers will conduct assessments of the proposed rule, and the specific assumptions and conclusions regarding the proposed delisting. These assessments will be completed during the public comment period.

We will consider all comments and information we receive during the comment period on this proposed rule as we prepare the final determination. Accordingly, the final decision may differ from this proposal.

Previous Federal Actions

Consideration of Federal protection for Eureka Valley evening-primrose and Eureka dune grass began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report on native plants considered to be endangered, threatened, or extinct in the United States. This report (House Doc. No. 94–51) was presented to Congress on January 9, 1975, and included Eureka Valley evening-primrose and Eureka dune grass as endangered. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of our intention to review the status of the plant taxa (groups of distinct populations considered separate from other such groups, such as species and subspecies) named therein. On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular

plant taxa, including Eureka Valley evening-primrose and Eureka dune grass, to be endangered species pursuant to section 4 of the Act. On April 26, 1978, we published a final rule to list 11 plant taxa as endangered, including Eureka Valley evening-primrose and Eureka dune grass, and 2 plant taxa as threatened (43 FR 17910); critical habitat was not designated.

On July 7, 2005, we published a notice indicating our intent to initiate 5-year status reviews for 31 species, including Eureka Valley evening-primrose and Eureka dune grass (70 FR 39327), and requested that the public provide us information within 60 days. On November 3, 2005, we published a notice extending the comment period to January 3, 2006 (70 FR 66842). We did not receive any information from the public regarding Eureka Valley evening-primrose or Eureka dune grass during either comment period. Five-year reviews were completed for both taxa on September 24, 2007 (Service 2007a, b). Based on the best available information at that time, we concluded that both taxa no longer met the definition of an endangered species, and further do not meet the definition of a threatened species, under the Act, and we recommended their removal from the List of Endangered and Threatened Plants.

On May 18, 2010, we received a petition dated May 13, 2010, from the Pacific Legal Foundation requesting that the Service delist Eureka Valley evening-primrose and Eureka dune grass. The petition was based on the analysis and recommendations contained in our 2007 5-year status reviews for these taxa. On January 19, 2011, we published a 90-day finding (76 FR 3069) in which we concluded that the petition and information in our files provided substantial information indicating that delisting may be warranted, announced that we were initiating status reviews for these taxa, and requested scientific and commercial data and other information regarding these taxa from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We received one letter from the public that provided additional information relevant to Eureka dune grass (Bell 2011).

On March 27, 2013, the Pacific Legal Foundation filed a lawsuit challenging our failure to issue the required 12-month findings in response to their petition. Pursuant to a settlement agreement approved by the court on August 5, 2013, and revised by a court order on December 19, 2013, we must deliver 12-month findings for the Eureka Valley evening-primrose and Eureka dune grass to the **Federal Register** by February 21, 2014.

This document constitutes our 12-month finding on the petition to delist Eureka Valley evening-primrose and Eureka dune grass, and we are proposing to delist the two taxa, which would remove them from the List of Endangered and Threatened Plants.

Background

For this proposal, we conducted a scientific analysis as presented in this document and supplemented with additional information presented in the Background Information document (Service 2014, entire; available at *http://www.regulations.gov*, Docket No. FWS–R8–ES–2013–0131). The Background Information document was prepared by Service biologists to provide additional discussion of the environmental setting for the Eureka Valley, and other background information of Eureka Valley evening-primrose's and Eureka dune grass's life history, taxonomy, genetics, seed bank ecology, survivorship and demography, rangewide distribution, and abundance surveys, as well as additional information on the threats that may be impacting both species.

Eureka Valley evening-primrose and Eureka dune grass are endemic (unique to a geographic area) to the sand dunes of Eureka Valley (Figure 1), which occurs within Death Valley National Park, Inyo County, California. Three dune systems occur in Eureka Valley and are located between the Last Chance Mountains to the east, the Saline Mountains to the south, and the Inyo Mountains to the west and north (Rowlands 1982, p. 2). The Eureka Dunes parallel the Last Chance Mountains (Service 1982, p. 12) and are the largest of the three dunes, covering a total area of about 2,003 acres (ac) (811 hectares (ha)) (Service 2013a based on Shovik 2010). The Saline Spur and Marble Canyon Dunes, two smaller dune systems, cover an area of about 238 ac (96 ha) and 610 ac (247 ha), respectively (Service 2013a based on Shovik 2010). Saline Spur Dunes and Marble Canyon Dunes, including a southern extension of Marble Canyon Dunes known as the unnamed site, are located approximately 4 miles (mi) (6.4 kilometers (km)) and 9 mi (14.4 km) west of Eureka Dunes (Bagley 1986, p. 4). The southern extension of Marble Canyon Dunes (the unnamed site) was previously treated as a separate dune system, but we refer to this area and the rest of the dune system as the Marble Canyon Dunes. See additional discussion in Service 2014 (pp. 4–7).

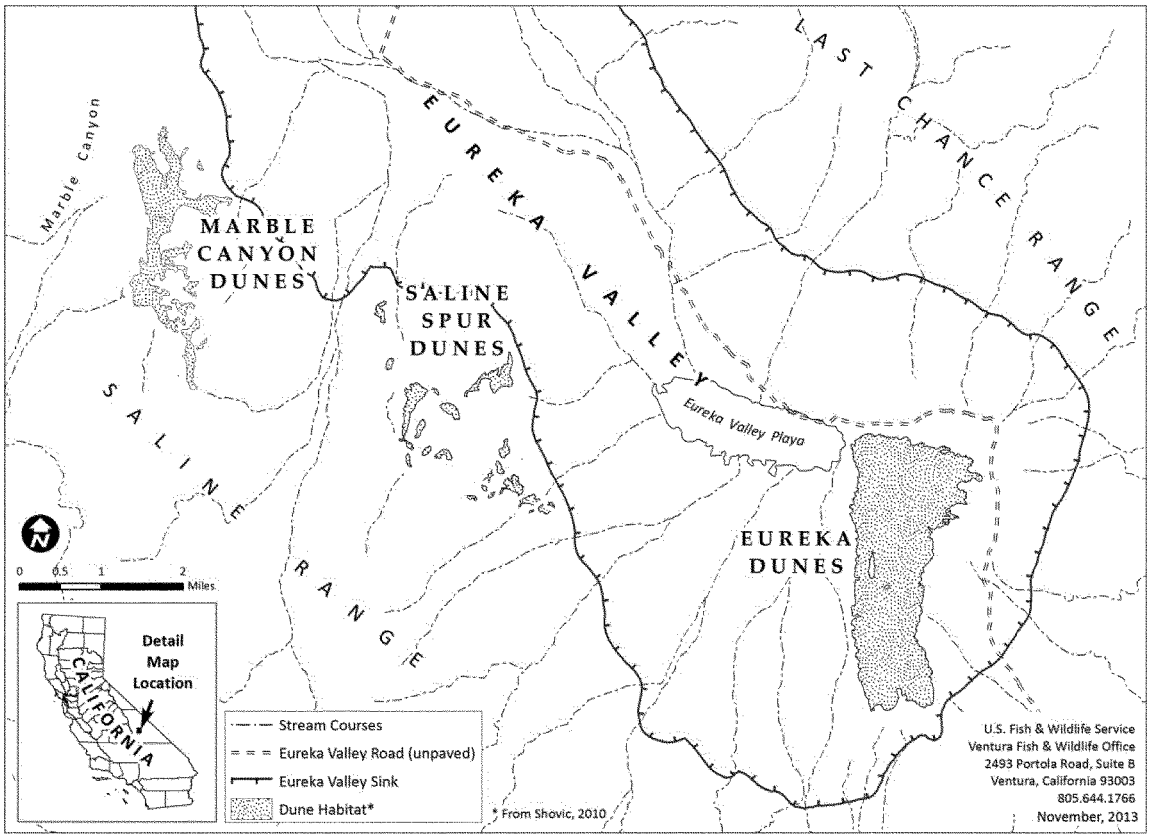

FIGURE 1—Sand dune systems of Eureka Valley, which are comprised of Eureka, Saline Spur, and Marble Canyon Dunes, Inyo County, California.

Eureka Valley Evening-Primrose

Species Description, Taxonomy, and Life History

Eureka Valley evening-primrose is a short-lived perennial in the evening-primrose family (Onagraceae). It forms rosettes for the first 1 or 2 years, then develops decumbent or ascending stems up to 8 decimeters (31.5 inches (in)) high. Plants produce clusters of white fading-to-pink flowers, which continue to be produced as long as conditions are favorable.

The taxon was listed as *Oenothera avita* (W.M. Klein) W.M. Klein subsp. *eurekensis* (Munz and J.C. Roos) W.M. Klein (Klein 1965, p. 116). However, since that time, the accepted scientific name (Wagner 1993, p. 803; Wagner 2002, p. 395; Wagner *et al.* 2007, p. 180; Wagner 2012, p. 952; CNPS 2013) has been and will be treated in this document as *O. californica* subsp. *eurekensis,* and referred to as Eureka Valley evening-primrose throughout the remainder of this document.

The plant spends most of the year as a small rosette of leaves (Pavlik 1979a, pp. 47–49, 52; 1979b, pp. 87–88). In April and May, plants undergo rapid stem elongation and bloom between April and July. Under optimal conditions, recruits (first-year plants) can bloom in the year in which they germinate (Pavlik 1979a, p. 66). In general, evening-primrose species are pollinated by hawkmoths, butterflies, and bees (Gregory 1963, pp. 387, 398, 403, 407; Moldenke 1976, pp. 322, 346, 358). Following the blooming period, the elongated stems die back and are buried by shifting sands. Plants sometimes bloom again in the fall with additional summer or fall rains (Pavlik 1979a, p. 53; 1979b, p. 89). Eureka Valley evening-primrose also has the ability to reproduce clonally (produce new individuals through vegetative growth rather than by seed), which provides a vegetative means for reproduction (Pavlik 1979a, p. 68; Pavlik and Barbour 1986, p. 84; Pavlik and Barbour 1988, p. 240).

Abundance and timing of rainfall appear to be important not only for germination, but for successful recruitment of individuals into the population; sufficient rainfall for germination in the fall months needs to be followed by additional rainfall events during the winter months for recruitment to occur. After several consecutive years of favorable conditions, a parent rosette may become ringed with smaller rosettes. In years with unfavorable climatic conditions, established plants may remain dormant and persist underground by their fleshy roots. Therefore, the number of above-ground plants observed in any year represents only a portion of the population.

Pavlik and Barbour (1985, pp. 15, 21) note that Eureka Valley evening-primrose is capable of abundant and precocious seed production. Eureka Valley evening-primrose has seed characteristics that provide mechanisms to ensure some seeds remain near the parent plant and some seeds disperse far from the parent plant. These characteristics ensure that there is a potential source of seed to supplement existing populations or establish new populations. Under laboratory conditions, seeds may remain viable at least 8 years (Pavlik and Barbour 1986, pp. 31, 36, 81). However, seed age or exposure to unfavorable conditions (such as heat and moisture) can reduce seed viability (Pavlik and Barbour (1986, p. 31). Some seeds may also be lost and unavailable for future recruitment. This may occur if wind

disperses seeds outside of suitable habitat.

Age-class distribution, survival, and mortality of Eureka Valley evening-primrose were examined by Pavlik and Barbour (1985, 1986). Research results indicate that despite the observed high mortality of young plants, short-lived cohorts (plants produced from a given year's reproduction that do not survive to the following year) produced large amounts of seed when compared to cohorts with high survivorship (plants produced from a given year's reproduction that have a high rate of survival to the following year), which produced relatively smaller amounts of seed (Pavlik and Barbour 1986, p. 10). Consequently, years with low plant survival potentially produce seed numbers equal to or better than years with high survival. Coupled with the contribution of vegetative reproduction (i.e., production of rosettes from branched rootstock), this copious seed production may compensate for short lifespans and high mortality observed by Pavlik and Barbour (1986, p. 14).

Monitoring efforts were initiated by the Park Service in the Eureka Valley in 2007, but this level of monitoring is not expected to continue if the species is delisted (Cipra and Fuhrmann 2013). Between 2010 and 2013, a combined effort by the U.S. Geological Survey (USGS) and Chow (Chow and Klinger 2013, entire) implemented an additional monitoring protocol for Eureka Valley evening-primrose. These monitoring efforts provided information on Eureka Valley evening-primrose's population structure (life-history stages), spatial distribution, and abundance. However, due to differences in methods for life stage classification and estimating spatial extent, and because neither the Park Service or USGS tracked the survivorship of individual plants, we cannot make a direct comparison between these monitoring efforts and the study conducted by Pavlik and Barbour (1986, entire) in the 1980s. Consequently, we cannot determine if current populations of Eureka Valley evening-primrose exhibit similar survival rates observed by Pavlik and Barbour (1986). However, assuming Eureka Valley evening-primrose populations continue to experience high mortality among recruits, recruitment from one year to the next is likely low.

Rangewide Distribution

As stated above in the Background section, all known, extant populations of Eureka Valley evening-primrose occur within Eureka Valley in Death Valley National Park (see Figure 1, above). The first known distribution map of this species is from 1976 (BLM 1976, p. 16). However, the most recent distribution maps generated in 2007 and 2008 (Park Service 2008a) and between 2011–2013 (Park Service 2011a, 2012a, 2013a) are the most detailed and accurate.

Eureka Valley evening-primrose occupies the stabilized, gentle dune slopes extending out onto the shallower sand fields bordering the dune systems of Eureka Valley (Bagley 1986, p. 10; Service 1982, p. 7). We have previously described in our 5-year status review (Service 2007a, Appendix A) the spatial distribution of Eureka Valley evening-primrose and the surveys that occurred following listing of the species and up to the late 1990s. Therefore, we are limiting our discussion in this proposed rule to the new information collected from the Park Service's monitoring program from 2007 to 2013, which was not available at the time of the 5-year status review.

Since 2007, new information on the species distribution (specifically, the above-ground expression of rosettes and flowering individuals) has been provided by the Park Service (Park Service 2008a, 2010a; 2011a; 2011b; 2012a; 2013a). As part of its survey efforts, the Park Service has mapped the extent of Eureka Valley evening-primrose at the southern end of Marble Canyon Dunes (i.e., the unnamed site), which had not been fully documented previously. In summary, the above-ground distribution of Eureka Valley evening-primrose may vary significantly from year to year (such as comparisons of data between 2007 and 2013, the latter of which captured a mass germination event that occurred on the sand flats of Eureka Dunes in March 2013 (Park Service 2013a, pp. 5, 8)). These variations require us to rely on more than a single survey event (i.e., we rely on a composite over time of its general habitat and distribution) to determine how much habitat the species occupies. Additionally, Eureka Valley evening-primrose's distribution may vary geographically within the same year, as observed at the Saline Spur and Marble Canyon Dunes in 2008 and 2013 (Park Service 2013a, pp. 4, 5, 12, 14).

Quantifying changes in the distribution of Eureka Valley evening-primrose since listing by comparing historical and current distribution maps is challenging due to the varying methods used to collect data, the level of detail that was achieved with those methods, and survey intensity. However, comparing historical and current distribution maps can indicate, over a long time period, if the population has persisted in certain locations. Overall, the presence and absence maps generated between 2007 and 2013 are more precise than any previously generated maps because the Park Service implemented a standardized survey method and created a grid system that allowed them to note specific changes in the distribution of the Eureka Valley evening-primrose. On a small scale, the usefulness of comparing recent maps with historical maps is limited because the 2007–2013 maps only reflect the above-ground expression, which shows extreme annual variation of the species for those particular years. On a large scale, however, these recent maps indicate that the populations are still present in the same general locations that they were known from at the time of listing and at the time of our 2007 5-year status review.

Abundance Surveys and Population Estimates

Abundance data for Eureka Valley evening-primrose have been collected by various parties and entities between 1974 and 2013. However, it is difficult to compare older and newer data sets due to the annual fluctuation in the above-ground distribution of Eureka Valley evening-primrose, as well as differences in methodology and scale. Consequently, estimating total population size is difficult at best. Additionally, we have no information regarding population size of Eureka Valley evening-primrose at the time of listing; abundance surveys (which could be used to estimate population size) prior to listing were limited to the north end of Eureka Dunes. Therefore, we cannot determine how populations may have changed over time and across the range of the species since listing.

Our evaluation of the Park Service's 2011 data set (which is the only year of data collected that allows a comparison across three different survey methods) indicates the estimated number of Eureka Valley evening-primrose individuals (i.e., above-ground expression) is within the range of 8,409 to 15,357 (see ''Abundance Surveys and Population Estimates—Eureka Valley evening-primrose'' section of the Background Information document (Service 2014, pp. 26–30)). The Park Service also estimated the total population size in 2011 to be 8,028 individuals (which included a slight recalculation from the previous estimate), and in 2013 to be 21,286 individuals (Park Service 2013a, p. 7), the latter of which documents a substantial increase in the above-ground expression of plants following a mass germination event observed on the sand

flats to the east and northeast of the Eureka Dunes (Park Service 2013a, pp. 4, 8; Chow and Klinger 2013, p. 4). Park staff theorized that a localized rainstorm may have triggered germination, because other locations for Eureka Valley evening-primrose did not respond similarly, and because substantial rainfall was not documented by weather stations surrounding Eureka Valley (Park Service 2013a, p. 14). The USGS and Chow (Chow and Klinger 2013, pp. 4–5) theorized that the mass germination event may be the result of higher soil moisture in this area because of soil texture or higher runoff due to the location's close proximity to the Last Chance mountain range. Although a ''high'' average density of plants was noted in the month of March at the sand flats, a follow-up visit in May indicated that most of these had disappeared; of those that survived, most had failed to flower or set seed (Park Service 2013a, p. 15; Cipra 2013, pers. comm.). USGS also noted that a lower proportion of individuals were in the reproductive stage at this location (Chow and Klinger 2013, pp. 4, 5). This information indicates that occasional mass germination events do occur, although such events do not necessarily result in successful recruitment of all individuals into the population. It also demonstrates how the above-ground expression of Eureka Valley evening-primrose can fluctuate substantially over a short period of time.

Although information on abundance and long-term population trends are limited in spatial extent, the best available data indicate (as stated above) that the Eureka Valley evening-primrose population is estimated to be in the thousands. However, it also is important to note that actual population sizes may vary greatly from the estimates described above for the following reasons:

(1) The size of the area on which densities were calculated is small (i.e., 1-ha monitoring plots or line transects) in comparison to the size of the area to which the densities are being extrapolated (i.e., the dune systems).

(2) Because Eureka Valley evening-primrose is clonal and exhibits a somewhat clumped distribution, it is often difficult to count individuals, and in general it is difficult to estimate the true population size (i.e., individuals can be both underestimated and overestimated).

(3) Different survey methods will result in different estimates of abundance.

(4) The density data used to estimate the 2011 population size only reflect the above-ground distribution of the species for that particular year.

(5) The Eureka Valley evening-primrose exhibits high annual variation, so the estimated population size will vary depending on the data collected within a given year.

(6) These population estimates include both reproductive and nonreproductive individuals; we do not know how many nonreproductive individuals survive to flower and set seed.

Eureka Dune Grass

Species Description, Taxonomy, and Life History

Eureka dune grass is a perennial, hummock-forming (development of mounds of windblown soil at the base of plants on dune landscapes) grass comprising a monotypic genus (genus containing only one single species) of the grass family (Poaceae). The coarse, stiff stems reach 20 in (50 cm) in height, and the lanceolate leaves are tipped with a sharp point (DeDecker 1987, p. 2). Flowers are clustered in spike-like panicles and produce seeds that are 0.16 in (4 millimeter (mm)) long and 0.08 in (2 mm) wide (Bell and Smith 2012, p. 1496). The root system becomes fibrous and extensive over time and can give rise to adventitious stems. Based on its morphological characteristics and taxonomic affinities, the species is thought to be a relictual species, which exists as a remnant of a formerly widely distributed group in an environment that is now different from where it originated.

Eureka dune grass is dormant during the winter and begins to produce new shoot growth around February. Growth accelerates in May, with flowering from April to June and seed dispersal between May and July (Pavlik 1979a, pp. 47–49; Pavlik 1979b, p. 87; Service 1982, pp. 4–6). Like all grass taxa, the flowers of Eureka dune grass are wind-pollinated and therefore do not rely on insect pollinators. Eureka dune grass does not appear to propagate asexually (Pavlik and Barbour 1985, p. 4); therefore, sexual reproduction is considered to be the dominant form of reproduction for this species.

Individuals have been observed to continue growing for at least 12 years with no signs of senescence (Henry n.d., pers. comm. *in* Pavlik and Barbour 1986, p. 11), and likely can grow for decades; older individuals form large hummocks that can reach on the order of 2,500 cubic decimeters (88 cubic feet; extrapolated from Pavlik and Barbour (1988, p. 229)). Germination of new individuals appears to occur infrequently, typically in response to rainfall during the summer months (Pavlik and Barbour 1986, pp. 47–59).

The following information on Eureka dune grass seedbank ecology is available related to seed production, dispersal, seed fate (based on wind dispersal and seed predation), viability, and germination:

- The amount of Eureka dune grass seed produced per individual increases with canopy size, which means that larger individuals may contribute more seed to the seed bank (Pavlik and Barbour 1985, p. 14). Compared to other perennial grass species, Eureka dune grass produces low numbers of seeds per individual (Pavlik and Barbour 1986, p. 30); this low seed production could be due to the inefficiency of wind pollination and the low density of individuals across the dunes (Pavlik and Barbour 1985, p. 17).
- Eureka dune grass seeds with floral bracts may disperse long distances whereas seeds without floral bracts may remain near the parent plant (Pavlik and Barbour 1985, pp. 40–41). Long-distance seed dispersal is important in forming new or supplementing existing populations (although wind dispersal could send seeds outside of suitable habitat and thus make them unavailable for future recruitment). In contrast, seeds remaining near the parent plant are important in supplementing existing populations.
- Seed predation may occur from insects and rodents. The amount of predation by scale insects and rodents was first studied by Pavlik and Barbour (1985, 1986). Pavlik and Barbour's (1985, p. 59) preliminary observations in 1985 indicated a small percentage (less than 2 percent) of pre-dispersal seed predation occurred by scale insects, whereas in 1986, they (Pavlik and Barbour 1986, p. 32; 1988, pp. 233–234) found that 14 percent of Eureka dune grass seeds (without floral bracts) and 6 percent of disseminules (seeds with floral bracts) were removed overnight by rodents. However, these data were only collected from the north end of Eureka Dunes. Therefore, we cannot determine if the level of insect and rodent predation observed by Pavlik and Barbour (1985, 1986) on seeds occurs across the range of the species or how it may affect the population due to the limited scope and duration of the study. However, given the species continues to occupy the same general distribution, it does not appear that the level of seed predation is causing population-level declines.
- Under laboratory conditions, seeds may remain viable for at least 8 years (Pavlik and Barbour 1986, pp. 31–32;

1988, p. 233). However, seed age or exposure to unfavorable conditions such as heat and moisture can reduce seed viability (Pavlik and Barbour 1986, pp. 31–32).

• An important factor in the persistence of Eureka dune grass may be the mass germination and establishment of Eureka dune grass seedlings (Pavlik and Barbour 1986, p. 55), particularly from seeds in the seed bank. These mass germination events are likely dependent on rare, above-average rainfall during the summer months (Pavlik and Barbour 1986, p. 51). For instance, the extremely wet conditions in July 1984 led to the mass germination and establishment of Eureka dune grass seedlings in 1984 and 1985; these favorable climatic conditions occurred only once in the previous 90 years (Pavlik and Barbour 1986, p. 54). More frequent climatic events that occur every 11 to 15 years may result in smaller germination and establishment events, which may serve to supply new individuals and replace those individuals that are lost through senescence (Pavlik and Barbour 1986, p. 54).

A demographic study was initiated in 1985 (Pavlik and Barbour 1985, entire; 1986, entire) to better understand how population attributes affected local abundance and persistence of Eureka dune grass; the study tracked the fate of seedlings established in 1984 (1984 cohort), as well as mature and senescent individuals. However, we note two constraints to these data: (1) The study was spatially restricted to the north slope of the Eureka Dunes and thus is not representative of the entire range of the species; and (2) The study was carried out over a 2-year period that included a year with very high rainfall that triggered a mass germination event followed by a year with very low rainfall. Thus, the conclusions generated from this study may not be representative of the population's response over a longer period of time. Given these constraints, results indicate that 24 percent of the 1984 cohort survived to develop into hummocks and 92 percent of the mature and senescent plants survived (Pavlik and Barbour 1986, pp. 9–10; 1988, p. 225). The cause of mortality among recruits was attributed to uprooting and damage from windstorms (Pavlik and Barbour 1986, p. 9; 1988, p. 225). A follow-up survey in 1987 found more than 90 percent of the 1984 cohort alive and growing (Pavlik and Barbour 1988, p. 225). This information indicates that once young plants become established, survival rates may be equal to that of mature and senescent plants.

Using survivorship data from the demographic study described above, Pavlik and Barbour (1986, p. 11) attempted to compare potential persistence of Eureka dune grass with other perennial grass species and two other Eureka Valley endemic plants (i.e., Eureka Valley evening-primrose and *Astragalus lentiginosus* var. *micans* (shining milk-vetch)). Although the comparisons were limited in scope and duration, Pavlik and Barbour (1986, p. 11) estimate that the established population of Eureka dune grass might persist for 88 years in the absence of recruitment. However, based on study limitations, including use of data collected following a rare mass germination event, this number may be an overestimate.

Similar to Eureka Valley evening-primrose (see *Eureka Valley Evening-primrose* section, above), monitoring of Eureka dune grass was initiated in 2007 (Park Service 2008a, entire). These monitoring efforts have provided information on Eureka dune grass population structure (life-history stages), spatial distribution, and abundance. Results indicate that the majority of the Eureka dune grass population was in its reproductive stage (33 to 66 percent) and a very small percent (0 to 3 percent) was in the nonreproductive seedling stage (Park Service 2008a, p. 13). Due to differences in how life stage classifications were made and in spatial extent of study areas, we cannot make a direct comparison between the study conducted by Pavlik and Barbour (1985, 1986) and Bagley (1986) and the information collected by the Park Service (Park Service 2008a). Additionally, the Park Service did not track the survivorship of individual plants; therefore, we cannot determine if current populations of Eureka dune grass exhibit similar survival rates observed by Pavlik and Barbour (1986, pp. 9–10; 1988, p. 225) in the 1980s. Even so, information collected by Pavlik and Barbour (1985, 1986), Bagley (1986), and the Park Service (2008a) indicate that: (1) Though the age-distribution within the population varies depending on the time of data collection, adult plants typically make up the majority of the population; and (2) Recruitment from year to year is likely low, but high recruitment each year is probably not necessary for the population to persist because of the long lifespan and high survivorship of the plants once they are established. Ultimately, population persistence will depend on the replacement of adult and senescent plants with new recruits.

Rangewide Distribution

As stated above in the Background section, all known, extant populations of Eureka dune grass occur within Eureka Valley in Death Valley National Park (see Figure 1, above). The first known distribution map of this species is from 1976 (BLM 1976, p. 16). However, the most recent maps generated in 2007 and 2008 (Park Service 2008a) and between 2011 and 2013 (Park Service 2011a, 2012a, 2013a) are the most detailed and accurate.

Eureka dune grass occupies the gentle to relatively steep slopes of the Eureka Dunes, and variable terrain of Saline Spur and Marble Canyon Dunes (Pavlik 1979a, pp. 35–36; Pavlik 1979b, p. 47; Service 1982, p. 4). At the time of listing, there were three known populations of Eureka dune grass within Eureka Valley, with the majority of the distribution on the Eureka Dunes (43 FR 17910; April 26, 1978). As mentioned above, although additional plants were subsequently discovered and described at the southern end of Marble Canyon Dunes, these are considered and described within this document as part of the Marble Canyon Dunes population.

We have previously described in our 2007 5-year status review the spatial distribution of Eureka dune grass and the surveys that occurred following listing of the species and up to the 1990s (Service 2007b, Appendix A). Therefore, we are limiting our discussion in this proposed rule to the new information collected from the Park Service's monitoring program from 2007 to 2013, which was not available at the time of the 5-year status review.

Quantifying changes in the distribution of Eureka dune grass since listing by comparing historical and current distribution maps is challenging due to the varying methods used to collect data, the level of detail that was achieved with those methods, and survey intensity. However, comparing historical and current distribution maps can indicate, over a long time period, if the population has declined or increased in certain locations. Overall, the presence and absence maps generated between 2007 and 2013 are more precise than any previously generated maps because the Park Service implemented a standardized survey method and created a grid system that allowed them to note specific changes in the distribution of the Eureka dune grass. Additionally, as part of its survey efforts, the Park Service has mapped the extent of Eureka dune grass at the southern end of Marble Canyon Dunes (i.e., the

unnamed site), which had not been fully documented previously.

Based on the life history of Eureka dune grass (see ''Eureka Dune Grass Biology'' section of the Background Information document, Service 2014, pp. 13–14), there is likely minimal annual variation in the distribution of Eureka dune grass because this species is long-lived, and mortality of young plants (once they become established) is relatively low and decreases with age. Consequently, to quantify changes in the distribution of Eureka dune grass that have occurred since listing, we compared the Park Service's 2013 distribution map to older maps (i.e., maps from the BLM (1976) and DeDecker (1979)). Again, those caveats mentioned previously (i.e., differences in survey methods, level of detail, survey intensity) make comparing distribution maps spanning a 37-year period difficult; however, these comparisons yield information regarding areas where the changes in the distribution of the population may have occurred. Based on our evaluation of current and historical distribution maps, the distribution of Eureka dune grass at Eureka Dunes appears relatively unchanged, and it continues to occupy habitat across the entire dune system, including habitat at the southern end of Marble Canyon Dunes (i.e., the unnamed site), which had not been fully documented previously.

Because the current Eureka dune grass distribution maps may not capture what is occurring on a small scale (such as localized declines in the density of plants) or the area occupied by the species, three additional analyses were conducted.

(1) Using distribution data between 2007 and 2013, the Park Service (2013a, entire) calculated changes in the number of 1-ha grid cells occupied by Eureka dune grass. Results showed a decrease in the number of grid cells occupied at Eureka Dunes, and no change at Marble Canyon and Saline Spur Dunes (Park Service 2013a, pp. 4, 5). Specifically at Eureka Dunes in 2012, Eureka dune grass was present at 397 cells as compared to 446 cells in in 2007; in 2013, Eureka dune grass was present at 390 cells (Park Service 2013a, p. 4). Thus, a change in Eureka dune grass distribution is evident at one location, but not represented across the range of the species at this time.

(2) In 2012 and 2013, the Park Service mapped individual clumps of Eureka dune grass on Eureka Dunes to help track the fate of individual clumps over time and to further ground-truth the 1-ha plot GPS-referenced grid system study employed between 2007 and 2013 (Park Service 2012a, 2013a). In 2013, the Park Service (2013a, p. 4) noted dead and dying hummocks on the northeast and southwest side of Eureka Dunes, which is consistent with the change in distribution observed in the Park Service's (2013a, p. 4) analysis at Eureka Dunes. Based on the Park Service's 2013 map, we calculated that 86 ac (35 ha) of the surface of the 2,003-ac (811-ha) Eureka Dunes (less than 4.3 percent) is occupied by Eureka dune grass (Service 2013b, unpublished data). While this new mapping effort will help refine existing monitoring, this information is limited in use because (to date) it only represents 2 years of data at two locations on one of three dunes where the species occurs. If the Park Service conducts additional mapping surveys in the future, new data could be more useful to help determine how the distribution of Eureka dune grass is changing over time.

(3) We inspected photopoints taken at Eureka Dunes as early 1974 to those in 2013 in an attempt to observe possible changes in Eureka dune grass abundance and distribution over time. Our visual inspection indicates a reduction, or in some cases a loss, in the visible Eureka dune grass individuals (especially in the number of large reproductive plants) at the north and southwest end of Eureka Dunes, and portion of Marble Canyon Dunes. We also calculated what proportion of the dunes were represented by the ''viewshed'' in the photopoints to determine to what extent the observed reduction represented conditions for the species dunewide. Results indicate that approximately 670 ac (271 ha), or 33.4 percent of the Eureka Dunes was visible in the photopoints taken from the north and south end of the dune (Service 2013c, unpublished data). Repeat photopoints were also made at a portion of Marble Canyon Dunes. The photopoints captured 130 ac (53 ha) out of a total 610 ac (247 ha) of the Marble Canyon Dunes, which constituted 21 percent of the dune and showed a similar visible reduction in the Eureka dune grass individuals over time. While our ''viewshed'' analysis likely overestimates the area visible from these photopoints, it represents our best estimate of the area covered by these repeat photopoints. The observation that a portion of the population at the north and southwest end of Eureka Dunes and part of Marble Canyon Dunes may be experiencing a decline in the abundance and distribution of large, reproductive individuals may be important if these individuals are not replaced. However, while a reduction in visible Eureka dune grass individuals is clearly noticeable from a visual inspection, it is difficult to quantify this reduction in terms of estimating changes in population distribution, densities, or abundance. Additionally, without other quantitative data to assist in interpretation, it is difficult to distinguish whether visual changes represent local shifts in distribution and density or rangewide changes in the population. Because our analysis is limited to only a portion of the range of the species, we cannot determine what changes in distribution and abundance have occurred over this same time period across the rest of the species' range within Eureka Valley.

On a small scale, the usefulness of comparing recent maps with historical maps is limited because of the higher precision that was possible in the 2007 to 2013 surveys. Overall and on a large scale, however, the most recent maps indicate that Eureka dune grass populations are still present in the same general locations that they were known from at the time of our 2007 5-year status review.

Abundance Surveys and Population Estimates

Developing population estimates for Eureka dune grass is challenging. We have no information regarding population size at the time of listing, and abundance surveys (which could be used to estimate population size) prior to listing were limited to the northern end of Eureka Dunes. Data collected since listing that could be used to estimate the abundance or population size of Eureka dune grass vary in methods, study areas, timing, and environmental conditions. Abundance data have been collected by various parties and entities between 1974 and 2013 (e.g., Henry 1976; Bagley 1986; Park Service 2008a, 2010a, 2011a, 2011b, 2012a, 2013a). It is difficult to compare these data sets primarily due to the use of different methodologies used and because the earlier efforts were limited in spatial extent. Therefore, we cannot determine how Eureka dune grass populations may have changed over time and across the range of the species since listing. Nevertheless, as discussed above for Eureka Valley evening-primrose, there is some usefulness to calculating these estimations as they provide an approximation of the size of each of the populations over time.

Park Service (2008a) data (e.g., resurveys of Henry (1976) and Bagley (1986) transects) provide the most site-specific comparison at this point in time, identifying statistically significant

declines in Eureka dune grass at the north end of Eureka Dunes (Park Service 2008b, pp. 5–6 and 17–18), which indicate a reduced number of large, reproductive Eureka dune grass individuals in this portion of Eureka Dunes. Additionally, photopoint comparisons over time at the north and southwest end of Eureka Dunes and a portion of Marble Canyon Dunes also indicate a loss of large, reproductive individuals at these locations. Because large reproductive individuals contribute disproportionately to the seed bank (see ''Ecology—Eureka dune grass'' section of the Background Information document, Service 2014), the loss of these individuals could affect the extent of seed bank available for future recruitment, at least at these locations where losses have been indicated. Finally, between 2007 and 2010, the Park Service also recorded the number of individuals in four life stages (i.e., vegetative, reproductive, seedling, and senescent) within monitoring plots (a subset of the grid system) in an attempt to provide a better understanding of population density and detect possible changes in population size. Because mortality is high in Eureka dune grass individuals until they become established and reproductive individuals are necessary to maintain the seedbank, we are interested in knowing how the number of reproductive individuals changes over time. However, it is difficult to determine how the number of individuals changes over time because it is difficult to classify and count individuals, there were a small number of plots established at each dune, and the Park Service only monitored these plots for 3 years.

Because of the limitations identified above, as well as the fact that previous studies documenting the abundance of Eureka dune grass were limited to the north end of Eureka Dunes (and thus may not be representative of the species' abundance at Eureka Dunes or at the other dunes), we are only using data from the monitoring plots established by the Park Service (Cipra *in litt.* 2011) at all three dunes (i.e., survey data from 2011 and 2013) to provide a population estimate for Eureka dune grass. For the same reasons as presented above for Eureka Valley evening-primrose, in order to compare survey methods across years prior to 2013, we only used 2011 data (i.e., the most complete data set prior to 2013 that included habitat-wide surveys of all three dunes in the same year). The Park Service estimated the total population size to be 8,014 individuals in 2011, and 8,176 individuals in 2013 (Park Service 2013a, p. 7). Based on this information, thousands of Eureka Dune grass individuals exist, and the number was relatively stable across the 2 years compared.

Finally, it is important to note that these population estimates are extrapolations; therefore, the true population size may vary greatly for the following reasons:

(1) The size of the area on which abundance counts were calculated is small (i.e., 1-ha monitoring plots or estimates of relative density within the grid system) in comparison to the size of the area to which the densities are being extrapolated (i.e., the dune systems).

(2) Because Eureka dune grass exhibits a somewhat clumped distribution, it is often difficult to count individuals, and in general it is difficult to estimate the true population size (i.e., individuals can be both underestimated and overestimated).

(3) These population estimates include both reproductive and nonreproductive individuals; we do not know the abundance of reproductive individuals within the population.

Regardless of these limitations in extrapolating population estimates for Eureka Dune grass, the best available data indicate the species continues to persist within Eureka Valley across its range (and as stated above, we have no information regarding population size at the time of listing for comparison, with population surveys prior to listing being limited to the northern end of Eureka Dunes). Currently, Eureka Dune grass is known to persist at all three dunes and is represented by thousands of individuals at each of these locations per the best data available from the Park Service.

Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: ''Objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.'' However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' Therefore, recovery criteria should help indicate when we would anticipate an analysis of the five threat factors under section 4(a)(1) would result in a determination that a species is no longer an endangered species or threatened species because of any of the five statutory factors.

Thus, while recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of or remove a species from the Federal List of Endangered and Threatened Plants (50 CFR 17.12) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

In 1982, we finalized the Eureka Valley Dunes Recovery Plan, which included both Eureka Valley evening-primrose and Eureka dune grass (Recovery Plan; Service 1982). Following guidance in effect at that time, the Recovery Plan did not include criteria that specifically addressed the point at which threats identified for each species would be removed or sufficiently ameliorated. Instead, the Recovery Plan identified two objectives, each with specific recovery tasks, to consider Eureka Valley evening-primrose and Eureka dune grass for downlisting to threatened status, and eventually, delisting (Service 1982, pp. 26–41). These two objectives are:

(1) Restore the Eureka dune grass and the Eureka Valley evening-primrose to threatened status by protecting extant populations from existing (i.e., in 1982) and potential human threats.

(2) Determine the number of individuals, populations, and acres of habitat necessary for each species to maintain itself without intensive management, in a vigorous, self-sustaining manner within their natural historical dune habitat (estimated 6,000 ac (2,428 ha)) and implement recovery tasks to attain these objectives.

Objective 1: Restore the Eureka dune grass and the Eureka Valley evening-primrose to threatened status by protecting extant populations from existing (i.e., in 1982) and potential human threats

Objective 1 is intended to remove existing human threats to populations of Eureka Valley evening-primrose and Eureka dune grass through enforcement of existing laws and regulations, and management of human access to Eureka Valley (Service 1982, p. 26). At the time of listing, the primary threat to both species was off-highway vehicle (OHV) activity, and a lesser threat was camping on and around the dunes (43 FR 17910; April 26, 1978). Since listing, potential human threats have included other recreational activities such as sandboarding and horseback riding.

Various land management activities have been implemented by the BLM (prior to Park Service acquisition of the Eureka Valley area in 1994) and the Park Service (since 1994). All of the dune systems within Eureka Valley have also been designated as Federal wilderness areas. A number of management activities have been implemented to support the long-term protection of Eureka Valley evening-primrose and Eureka dune grass within the Federal wilderness area, including (but not limited to): making OHV activity illegal; conducting patrols to enforce laws, regulations, and restrictions; closing and restoring unauthorized roads; installing interpretative signs, barriers, and wilderness boundary signs; and delineating and maintaining campsites (Park Service 2008b, 2009, 2010b).

Additionally, various education and public outreach (e.g., public awareness program, interpretive displays) has been conducted to reduce overall impacts to the species. Because all three populations occur within Federal wilderness areas that are now protected against the threats identified as imminent at the time of listing and in the Recovery Plan, we conclude that this recovery objective has been met.

Objective 2: Determine the number of individuals, populations, and acres of habitat necessary for each species to maintain itself without intensive management, in a vigorous, self-sustaining manner within their natural historical dune habitat (estimated 6,000 ac (2,428 ha)) and implement recovery tasks to attain these objectives

Although this objective in the 1982 recovery plan is not the clearest example of a measurable and objective criterion, the intent is to evaluate the status of both species with regards to demographic characteristics to determine whether they could be considered recovered as opposed to meeting either the definition of an endangered species or the definition of a threatened species, and more importantly to attain the desired demographic levels necessary for recovery. While we have not yet developed precise values for all of the various demographic characteristics that help us determine whether the removal of threats have the desired effect (e.g., stable populations, positive growth), both species still occupy all three dune systems, and the best available monitoring data indicate thousands of plants are present at each dune system. Additionally, the best available information indicates that the BLM and Park Service have sufficiently minimized OHV and other recreation activities that were previously impacting the populations and their habitat. Even though the precise values of all demographic characteristics are not known, we note that many research and monitoring efforts have occurred for both species since the time of listing (unless otherwise noted), which have provided information on the life-history needs of both Eureka Valley evening-primrose and Eureka dune grass, as well as potential impacts to both species, including (but not limited to) the following studies:

(1) Conducting a series of studies on both species to investigate effects of pollination on seed set, seed ecology, species' demography, and plant and animal interactions (herbivory, seed predation, and dispersal) (Pavlik and Barbour 1985, 1986).

(2) Establishing baseline conditions for monitoring trends of both species across all three dune systems (Bagley 1986).

(3) Studying the genetic diversity of all Eureka dune grass populations (Bell 2003).

(4) Conducting partial distribution surveys of both species on portions of various dunes (Beymer *in litt.* 1997a; Peterson *in litt.* 1998), as well as documenting the distribution and abundance of Russian thistle, a potential competitor, across all three dune systems (Park Service 2011b).

(5) Documenting distribution, abundance, and demography of both species (Park Service 2008a, 2008c, 2010a, 2011a, 2011b, 2012a, 2013a).

(6) Determining if vegetation succession at the northern end of Eureka Dunes (Eureka dune grass habitat) is associated with changes in subsurface hydrology (Park Service 2008c, p. 4).

(7) Investigating potential competition between Russian thistle and Eureka Valley evening-primrose, and the effects of herbivory on Eureka Valley evening-primrose (Chow and Klinger 2013; Chow *in litt.* 2011).

(8) Monitoring photopoint stations over time, starting in 1985, and retaken at various intervals (Park Service 2008c, 2011b).

As a result of the considerable work that has been undertaken to understand the population dynamics and life histories of these two species, we consider the intent of Objective 2 has been partially met. Based on our review of the Recovery Plan and the information obtained from the various surveys and research activities that have occurred to date, we conclude that the status of the habitat for Eureka Valley evening-primrose and Eureka dune grass has improved due to activities that have been implemented by BLM and the Park Service. The effects of these activities on the status of the two taxa are discussed in further detail below.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species because of any one or a combination of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or human made factors affecting its continued existence. A species may be reclassified or removed from the Federal List of Endangered and Threatened Plants (50 CFR 17.12) on the same basis.

Determining whether the status of a species has improved to the point that it can be downlisted or delisted requires consideration of whether the species is endangered or threatened because of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future

following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is an ''endangered species'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a ''threatened species'' if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The word ''range'' in the significant portion of its range phrase refers to the range in which the species currently exists, and the word ''significant'' refers to the value of that portion of the range being considered to the conservation of the species. The ''foreseeable future'' is the period of time over which events or effects reasonably can or should be anticipated, or trends extrapolated. For the purposes of this analysis, we first evaluate the status of the species throughout all its range, then consider whether the species is in danger of extinction or likely to become so in any significant portion of its range.

Brief History of Threats Analysis

At the time of listing, the primary threat to Eureka Valley evening-primrose and Eureka dune grass was OHV activity at Eureka Dunes (43 FR 17910; April 26, 1978); although not specifically stated in the final listing rule, this also presumes a lesser degree of impacts from camping that were associated with OHV activity on and around the dunes. By the time the Recovery Plan was developed in 1982 (Service 1982, entire), threats to both plants from these activities had been substantially ameliorated. Subsequently, we conducted a 5-year status review (which included an analysis of threats that affect the species) in 2007 (Service 2007a, 2007b, entire). By this point in time, the primary threat at the time of listing (OHV activity at Eureka Dunes) had been addressed with closure of Eureka Dunes by BLM, subsequent land use designations, and management measures undertaken by BLM and later by the Park Service (Service 2007a, pp. 8–10, 11–12, 13; Service 2007b, pp. 5–7, 9, 11). We also identified camping, horseback riding, and sandboarding as potential threats since the time of listing; however, we determined that these activities no longer posed a threat to the two species because of successful management implemented by the Park Service (Service 2007a, pp. 10–12, 13; Service 2007b, pp. 7–8, 11). Finally, we identified potential threats to Eureka Valley evening-primrose and Eureka dune grass in our 2007 5-year status reviews, including: Russian thistle, predation, and stochastic events; we determined that we did not have sufficient information to conclude that these impacts were a threat to the continued existence of both species (Service 2007a, pp. 11, 12–13; Service 2007b, pp. 9, 10–11).

For a detailed discussion of the current status review initiated with our 2011 90-day finding (76 FR 3069), please see the Background Information document (Service 2014, pp. 38–65). The following sections provide analyses of the potential current or future impacts to Eureka Valley evening-primrose and Eureka Dune grass, including: OHV activity (Factors A and E); other recreational activities (i.e., horseback riding, sandboarding, camping, and associated access routes) (Factors A and E); overutilization for commercial, recreational, scientific, or educational purposes (Factor B); herbivory and seed predation (Factor C); inadequacy of existing regulatory mechanisms (Factor D); competition with Russian thistle (Factor E); climate change (Factor E); and stochastic events (Factor E).

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

OHV Activity

OHV activity generally includes 4-wheel drive vehicular use of roads and trails, predominantly on public lands, for the purpose of touring, hunting, fishing, or other public land use. Within the Eureka Valley, OHV activity was an authorized use until 1976, when BLM closed Eureka Dunes and some of the surrounding area to OHVs following publication of the proposed rule to list Eureka Valley evening-primrose and Eureka dune grass. Subsequently in 1980, BLM designated Eureka Dunes and some of the surrounding area as an Area of Critical Environmental Concern (ACEC) and began compliance monitoring and management (BLM 1982, pp. 3–5). BLM's efforts resulted in few observed violations of the OHV closures between 1979 and 1994 (Service 1982, p. 24; DeDecker 1994, Harris 1994, and Stormo 1994 *in* Noell 1994, p. 9).

In general, the impacts to Eureka Valley evening-primrose and Eureka dune grass associated with OHV activity have essentially been ameliorated, in large part due to the designation of Federal wilderness areas throughout both species' ranges. First, the management of Eureka Valley was transferred from BLM to the Park Service in 1994. Subsequently in 1994, all of the dune systems within Eureka Valley were designated as Federal wilderness areas. Under the authority of the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*), use of mechanized vehicles were no longer allowed throughout the entire ranges of both species. This OHV prohibition throughout the range of both species, along with the benefits associated with the prohibition of other activities in Federal wilderness areas (e.g., development of new roads or structures, use of motorized equipment), all of which must be implemented by the Park Service (per various laws, directives, and plans specific to the Park Service and Death Valley National Park), have essentially ameliorated the threat of OHV activity and other ground disturbance activities to both species.

Since 1994, the Park Service has documented occasional illegal OHV activity in Federal wilderness areas and has proposed additional measures to further reduce this activity; however, the Park Service acknowledges that the remote location of the dunes and limited resources make enforcing restrictions difficult (Park Service 2011b, p. 17).

OHV activity could affect Eureka Valley evening-primrose and Eureka dune grass habitat in multiple ways, as evidenced from many studies that have occurred within dune ecosystems (such as Wilshire and Nakata 1976, Webb and Wilshire 1983). Physical impacts on dunes can include compaction or erosion of sandy substrates, acceleration of wind erosion (Gillette and Adams 1983, pp. 97–109), and acceleration of dune drift (Gilberston 1983, pp. 362–365). OHV activity can also change the unique hydrologic conditions of dunes. Because dunes have the capacity to hold moisture for long periods of time, disturbance of the surface sands resulting in exposure of moist sands underneath can increase moisture loss from the dunes (Geological Society of America 1977, p. 4). Changes in physical and hydrologic properties of the dunes from heavy OHV activity could in turn affect the suitability of the dune habitat for germination and recruitment of seedlings, clonal expansion of existing individuals, and dispersal of seeds to favorable microsites.

The same potential OHV impacts that affect dune habitat can also affect Eureka Valley evening-primrose and Eureka dune grass individual plants. Normally, these types of impacts would be discussed under Factor E (Other Natural or Manmade Factors Affecting Its Continued Existence), but are included here in the Factor A discussion for ease of analysis. OHV impacts to individual plants within

dune systems and other desert ecosystems have been extensively studied (such as Bury and Luckenbach 1983, Gilbertson 1983, and Lathrop 1983). Within dunes systems, for instance, while OHV activity alters the physical structure and hydrology of the dunes (rendering the dune habitat less suitable for supporting individuals and populations of the two species), it also affects individuals directly by shredding plants or damaging root systems, thereby killing or injuring (e.g., reducing the reproduction or survival of individuals) the plants.

Although unauthorized OHV activity has occasionally occurred on the Eureka Dunes, it has not approached the levels seen prior to listing Eureka Valley evening-primrose and Eureka dune grass as endangered species. Management actions initially taken by BLM prior to listing (i.e., closure to OHV recreation) and following listing of these species (e.g., vehicle route closures, control of visitor use, visitor education, enforcement of wilderness closures) have continued and increased under Park Service management, and all populations of both species are now within designated wilderness area where OHVs are prohibited. The management of OHV activity through land use designations (i.e., ACEC, Federal wilderness areas) has resulted in the near elimination of OHV activity on Eureka Dunes at the current time. We anticipate this will continue into the future because we expect Federal wilderness areas to remain in place indefinitely, and we expect the Park Service's current management to be implemented over the next 20 years, as well as modified periodically into the future with adaptive management strategies (as demonstrated by the Park Service's natural resource management strategies to date and anticipated in the future per Park Service policies and regulations (see Factor D)). Additionally, the remote location, inaccessibility, and wilderness status of the Saline Spur and Marble Canyon Dunes appear to be providing sufficient protection for dune habitats and plants at these locations both currently and in the future. Although the Park Service has documented sporadic occurrences of unauthorized OHV activity, these occurrences are almost entirely localized to areas on and adjacent to the northern end of Eureka Dunes (Beymer 1996; Beymer *in litt.* 1997b,d,g; Beymer 1997c,e,f; Anderson 1998; Dellingers 1998a–c; Peterson *in litt.* 1998b,c; Rods 1998; Park Service circa 2000; Rods 2000; Park Service 2011b). Therefore, we conclude, based on the best available information, that the Wilderness Area designation, coupled with Park Service management of OHV activity and other visitor uses, have significantly reduced these impacts to Eureka Valley evening-primrose and Eureka dune grass and their habitat currently and into the future.

Other Recreational Activities

In addition to unauthorized OHV activity that may occur currently (as described above), other recreational activities have been known historically and currently occur (occasionally) within the Eureka Dunes, including horseback riding, sandboarding, camping outside of designated areas, and creation of access routes.

Camping and associated access routes were identified as a minor threat in the Recovery Plan because their proximity to Eureka Dunes facilitated unauthorized OHV activity (Service 1982, pg. 22, 23). Horseback riding and sandboarding were potential threats to Eureka Valley evening-primrose and Eureka dune grass identified after listing, and were discussed in the 5-year status reviews published in 2007 (Service 2007a, p. 10; Service 2007b, pp. 78). All of these activities were discussed in our 5-year review under Factor A because, like OHV activity, they have the ability to have physical impacts on the dune habitat (such as destabilization and displacement of sands); however, these same activities have the potential for damaging individual plants through crushing, trampling, and uprooting. Although impacts to individual plants are more appropriately discussed under Factor E, for ease of analysis we also discuss impacts to individual plants here.

Although horseback riding was first identified by the Park Service as a potential concern in the late 1990s, there is no information regarding the extent of an impact to Eureka Valley evening-primrose and Eureka dune grass during this period, nor is there specific evidence related to the adverse effects of trampling by horses. Regardless, the Park Service considered potential adverse effects from horseback riding to be similar to those of light to moderate OHV activity (as described by Pavlik (1979a) as one to multiple tire passes over individual plants), which in turn could trample or crush (Factor E) Eureka Valley evening-primrose or Eureka dune grass plants.

Sandboarding became popular in the late 1990s, and this activity increased within Eureka Valley specifically following an October 1997 article in *Esquire Magazine* that identified Eureka Dunes as a location to pursue this activity (Warren 1997, p. 143). There is no information regarding the extent of the adverse effects that this activity had on Eureka Valley evening-primrose or Eureka dune grass, but crushing (Factor E) of individual Eureka dune grass plants was observed in 1997 (Beymer 1997h).

Camping and access routes were first identified as a concern to Eureka Valley evening-primrose and Eureka dune grass habitat and plants as a result of observed OHV activity concentrating near the northwest corner of Eureka Dunes (BLM 1982, p. 4; Service 1982, pp. 22–23). The Recovery Plan discusses camping and associated access routes as facilitating unauthorized OHV activity, which in turn caused adverse effects to habitat for both species (Service 1982, p. 24); although the plan does not specify, we assume these activities were identified as threats because the concentration of activity could result in trampling of individual plants (Factor E) or alteration of habitat due to compaction or erosion (Factor A).

Since the time of listing, a number of actions have been implemented to reduce and eliminate impacts associated with horseback riding, sandboarding, camping, and establishment of associated access points within and around Eureka Valley evening-primrose and Eureka dune grass habitat (e.g., establishing designated wilderness areas throughout the Eureka Valley, with attendant restrictions on the development of new roads and structures, and not allowing the use of motorized vehicles off designated roads). The BLM and Park Service have implemented recommendations from the Recovery Plan (e.g., establishment of defined camping areas away from the dunes, transforming the northwest access point into a day-use-only area) (Park Service 2000, p. 11; Park Service 2006, pp. 6–7), and horseback riding and sandboarding have been prohibited since 2002 (Park Service 2002, p. 3; 2006, p. 10). The Park Service enforces the restrictions, including the wilderness area designation that prohibits OHV activity (and thus potential unauthorized camping and access routes) on the dunes. Beginning in 2007, the Park Service also expanded a program to further increase visitor compliance with the rules and regulations that outline authorized activities in the Eureka Dunes, which includes: Conducting patrols; closing and restoring illegal roads; installing interpretative signs, barriers, and wilderness boundary signs; and delineating and maintaining campsites (Park Service 2008b, 2009, 2010b). While the NPS has documented some

unauthorized activity (e.g., sandboarding, OHV activity in closed areas) that may result in minor or occasional impact to individual plants, these are infrequent occurrences and affect very small areas and are not spread throughout the range of either species (Beymer 1996; Beymer *in litt.* 1997b,d,g; Beymer 1997c,e,f; Anderson 1998; Dellingers 1998a–c; Peterson *in litt.* 1998b,c; Rods 1998; Park Service circa 2000; Rods 2000; Park Service 2011b). Therefore, the best available information at this time indicates that unauthorized OHV and other recreational activities, if they occur, are not causing population-level effects (as compared to pre-listing levels) for either species currently, nor are they expected to do so in the future, in large part due to the extensive protections and management provided by the Park Service.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Utilization for commercial, recreational, scientific, or educational purposes was not identified as a threat to Eureka Valley evening-primrose or Eureka dune grass in the listing rule. Both taxa have no known commercial or recreational value that we consider consumptive (that is, based on physical use or removal of the plants). Educational groups frequently visit Eureka Dunes, but we are unaware of any activities that would be considered consumptive use. Since listing, there have been three section 10(a)(1)(A) permits issued for studies involving the removal of plants, seeds, or plant parts. These studies usually involve collection of seeds or leaves for laboratory experiments or collection of voucher specimens for herbaria; in each case we analyzed potential impacts during the permitting process and determined that the collection activities would not jeopardize the continued existence of the species. Additionally, Eureka dune grass seeds were collected in 2007, as part of a joint project between the Park Service and the Center for Plant Conservation to preserve germplasm (a collection of genetic resources) of federally listed species (Fraga 2007). We do not consider this level of research and collection to pose any potential threat of overutilization for either of the species. Furthermore, the State of California and Park Service have regulatory mechanisms in place to control any potential utilization in the future (see also Factor D below). Any collection of plants would require permits from the State of California and the Park Service. We conclude that overutilization for commercial, recreational, scientific, or educational purposes is not a short-term or long-term threat to the continued existence of Eureka Valley evening-primrose or Eureka dune grass.

C. Disease or Predation

At the time of listing, disease and predation were not identified as potential threats to Eureka Valley evening-primrose or Eureka dune grass. Since then, studies on both species imply that herbivory and seed predation are potential threats for both species.

(1) Pavlik and Barbour (1985, pp. 62–63) concluded that jackrabbit pruning of Eureka dune grass would seldom lead to the death of mature plants; however, in contrast, pruning could remove branches of Eureka Valley evening-primrose or jackrabbits may cause mortality of individual plants by uprooting them. Additionally, the pruning could have a negative effect on seed production if it occurs prior to ripening and dispersal (Pavlik and Barbour 1985, pp. 60, 62–63. Pavlik and Barbour (1985, pp. 62–63) suggested that herbivory of Eureka Valley evening-primrose could result in a substantial loss of seeds entering the seed bank if peak herbivory coincided with peak seed production in a given season, though they noted that most seed production occurred prior to the start of intense herbivory.

(2) Chow (*in litt.* 2011) hypothesized that herbivory of Eureka Valley evening-primrose may affect the size, survivability, and fecundity of individual plants. Chow (*in litt.* 2011) collected preliminary information on the effects of herbivory at all three dunes in 2011. This information indicates that the level of herbivory varies at each dune, ranging from either no evidence of herbivory to the complete loss of individuals (although we note this information was limited to one season).

(3) USGS initiated a 3-year study in 2013 that includes the potential effects of herbivory on the two species. First-year data indicate that herbivore damage had a strong impact on both species, with 50 to 89 percent of tagged Eureka dune grass stems consumed or nipped off each month from March to July; and up to 99 percent of the surface area of Eureka Valley evening-primrose individuals consumed, contributing to low survival rates at all dune sites (Scoles-Sciulla and DeFalco 2013).

Although herbivory and seed predation are documented to occur, as indicated above (Pavlik and Barbour 1985; Chow in litt. 2011; Scoles-Sciulla and DeFalco 2013), the best available information is based on observations from single season evaluations, and in the case of Pavlik and Barbour's (1985) studies, limited to a portion of one population (i.e., north end of Eureka Dunes).

Seed predation and herbivory are naturally occurring processes. We expect that both Eureka Valley evening-primrose and Eureka dune grass are adapted to withstand some level of herbivory and seed predation. Given that both species have persisted since listing (and since the studies in 1985 and 1986), and continue to occupy the same general distribution, it does not appear that herbivory and seed predation by themselves are occurring at such a level to cause population-level declines or other adverse effects to either species as a whole. Based on the best available information at this time (i.e., a single season of herbivory/seed predation study; the expectation that these species have evolved with some level of herbivory/seed predation; and that herbivory/seed predation is naturally occurring, and some level of herbivory/seed predation is expected for both species), we conclude that the observed impacts are not causing population-level effects for either species currently, nor are they expected to do so in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

Because the ranges of both Eureka Valley evening-primrose and Eureka dune grass now occur entirely on Park Service land, any potential for impacts to the two species would be those from Park Service activities or from activities under their jurisdiction. Regulatory mechanisms (as they relate to OHV and other recreational activities) that protect the Eureka Valley evening-primrose and Eureka dune grass habitat were discussed under Factor A above (i.e., protections afforded currently and into the future as a result of the congressionally designated wilderness). These protections, taken together, would provide adequate regulatory mechanisms to prevent the Eureka Valley evening-primrose and Eureka dune grass from becoming endangered or threatened after they are removed from the Federal List of Endangered and Threatened Plants. Additional regulatory mechanisms (not discussed above under Factor A) as they relate to Factors A, B, C, and E include the following:

(1) *Organic Act of 1916 (16 U.S.C. 1,* as amended*).* This Act promotes and regulates the use of National Parks to conserve scenery, national and historical objects, and wildlife to

provide for the enjoyment of current and future generations. Furthermore, Park Service management policies (Park Service 2006) interpret the Park Service's Organic Act in a manner that prohibits the impairment of any significant park resource. For example, there is a legal mandate to conserve and protect significant park resources; Eureka Dunes are recognized by the Park Service as a significant park resource.

(2) *General Management Plan (2002).* The Park Service manages the Eureka Valley under a broad general management plan, which identified the need for development of site-specific management for Eureka Valley (Park Service 2002, p. 7); however, such a plan has not yet been developed. Despite the lack of a site-specific management plan for the Eureka Valley, the general management plan must be consistent with the legal and stewardship mandates outlined in national and Park Service-wide laws and policies (Park Service 2002; Park Service 2006).

(3) *Wilderness and Backcountry Stewardship Plan (2013).* In 2013, the Park Service finalized its Wilderness and Backcountry Stewardship Plan and environmental assessment, which is considered an implementation plan tiered from the 2002 General Management Plan. The Park Service selected a modification of one of the alternatives (i.e., Alternative D) that would provide benefits to Eureka Valley evening-primrose and Eureka dune grass, and their habitat, by delineating existing campsites and designating additional campsites at Eureka Dunes, prohibiting camping and sandboarding on Eureka Dunes, upgrading or replacing the existing vault toilet and installing a second low maintenance toilet on the east side of the dunes, supporting a campground host during heavy visitor use periods, and increasing visitor education on- and off-site (Park Service 2013b, pp. 4, 5, 10, 16). This plan also discusses the Park Service's methods for managing nonnative plant species including (but not limited to) Russian thistle.

Removing Eureka Valley evening-primrose and Eureka dune grass from the Federal List of Endangered or Threatened Plants would not significantly change the protections afforded these species. At the time of listing, the existing regulatory mechanisms were a concern because we determined they were inadequate to address the threat to the habitat posed by OHV recreation. Currently, because the ranges of both Eureka Valley evening-primrose and Eureka dune grass occur entirely on Park Service land, any potential for impacts to the two species would be those from Park Service activities or from activities under their jurisdiction. All areas containing populations of both species are within congressionally designated wilderness (Park Service 2002). The Park Service has also prohibited other activities, such as sandboarding and horseback riding, that have potential adverse effects to populations of these species (Croissant *in litt.* 2005), and the Park Service implements extensive public outreach, promotes research, and ensures enforcement of its laws and regulations (either through patrols or potentially the future use of a campground host) to ensure impacts to both species are minimized to the maximum extent practicable (Park Service 2002, 2006, 2013b).

While most of these laws, regulations, and policies are not specifically directed toward protection of Eureka Valley evening-primrose and Eureka dune grass, they mandate consideration, management, and protection of resources that benefit these species. Additionally, these laws contribute to and provide mechanisms for agency planning and implementation directed specifically toward management of Eureka Valley evening-primrose and Eureka dune grass and their habitat. Because most of these laws and regulations are national in scope and are not conditional on the listed status of the plants, we expect these laws and regulatory mechanisms to remain in place after Eureka Valley evening-primrose and Eureka dune grass are delisted. Therefore, the inadequacy of existing regulatory mechanisms is not a threat to Eureka Valley evening-primrose and Eureka dune grass now or in the future. Additionally, although some factors described in this document may continue to cause stress to either one or both species, the existing regulatory mechanisms are sufficient to manage the continued existence of Eureka Valley evening-primrose and Eureka dune grass currently and in the future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

OHV Activity and Other Recreational Activities

See the ''OHV Activity'' and ''Other Recreational Activities'' sections, above under Factor A, for a complete discussion of realized and potential impacts since the time of listing. As stated there, we included a complete discussion of potential impacts to both habitat and individual plants under Factor A for ease of analysis. We conclude, based on the best available information, that the Wilderness Area designation, coupled with Park Service management of OHV activity and other recreational activity, have significantly reduced potential impacts to Eureka Valley evening-primrose and Eureka dune grass individuals currently and into the future. See additional discussion above under Factors A and D.

Competition With Russian Thistle

Invasive, nonnative plants can potentially impact the long-term persistence of endemic species. *Salsola* spp. (Russian thistle) is the only invasive, nonnative species that has spread onto the dunes in the Eureka Valley. Previous information (available at the time of our 2007 5-year reviews) was generally limited to personal observations and collections with no specific information regarding the density or distribution of Russian thistle. However, due to continuing concerns expressed by the Park Service and other parties since 2007, we conducted a more thorough review of the life-history characteristics of Russian thistle and the potential impacts it could have on both species, particularly the potential for Russian thistle to compete with Eureka Valley evening-primrose and Eureka dune grass for resources such as water and nutrients.

Russian thistle is known to spread in areas where soil has been disturbed, and is commonly found along road margins, rail lines, feed lots, and abandoned agricultural fields, and in grain seed. Although the source of spread is unknown for the Eureka Valley, it was first noted there in the 1970s; agricultural activities (grazing and farming) still occur in the northern portion of Eureka Valley to the north of Death Valley National Park, likely serving as a continuing seed source.

At the time of our 2007 5-year status reviews, we briefly discussed potential competition with Russian thistle as a threat to Eureka Valley evening-primrose and Eureka dune grass. We concluded that Russian thistle was not a substantial threat to Eureka Valley evening-primrose because the latter continued to occupy areas containing Russian thistle, and there was no information regarding the effects of Russian thistle on the stability of the population (Service 2007a, p. 12). For Eureka dune grass, we also concluded that Russian thistle was not a substantial threat because there was no information to support a competitive relationship between it and Russian

thistle (Service 2007b, p. 10). Nevertheless, there was a general perception that the distribution of Russian thistle had increased since the 1980s. Therefore, since the time of our 2007 5-year reviews, we have continued to review literature pertaining to Russian thistle, and have obtained additional information from the Park Service regarding the distribution and relative density of Russian thistle within the habitat of Eureka Valley evening-primrose and Eureka dune grass (Service 2014, pp. 51–58).

In 2011, the distribution and density pattern of Russian thistle and Eureka Valley evening-primrose was mapped by the Park Service across all three dunes over several years (Park Service 2011a, pp. 18–21). In addition, the USGS noted an inverse relationship in the spatial distribution and abundance of the two species along a series of transects. Both of these studies suggested that there may be a competitive relationship for resources (for instance, water or light) between Russian thistle and Eureka Valley evening-primrose (Chow and Klinger 2013, p. 15). Therefore, in 2012, USGS initiated an *ex situ* pilot study to determine if there is a potential competitive relationship between Russian thistle and Eureka Valley evening-primrose (Chow and Klinger 2013, pp. 15–18). Preliminary information provided by Chow and Klinger (2013, pp. 17–18) indicates that intraspecific competition (competition between individuals of the same species) had a greater effect on Eureka Valley evening-primrose than interspecific competition (competition between individuals of different species) with Russian thistle. However, we note that the results of this study are preliminary and limited to a short time period (i.e., 10 weeks). Based on past and current Park Service management practices, we reasonably anticipate that the Park Service would incorporate new information received from future management and research studies into their future management plans for Eureka Valley.

Limited information is available on the effects of Russian thistle to native plant species and ecosystems, likely because Russian thistle tends to invade disturbed areas; thus, almost all available literature is based on its effects to agricultural crops and grazing lands. Regardless, general impacts to native flora, including Eureka Valley evening-primrose or Eureka dune grass, from Russian thistle could include increased competition when water is limited (Allen 1982, p. 739), or potentially reduced recruitment (such as exhibited by other invasive, nonnative plants that occur in high abundance) (Thomson 2005, pp. 615–624; Barrows *et al.* 2009, pp. 679, 683).

To better understand the overlap in distribution of Russian thistle and Eureka Valley evening-primrose, we examined the Park Service's best available data layers for each species (i.e., 2010 data for Russian thistle and 2011 data for Eureka Valley evening-primrose, which were the years in which each species had the greatest above-ground expression). Based on our analysis, the distribution of Russian thistle overlaps the Eureka Valley evening-primrose distribution over all three dunes by 84 percent (Service 2013a). However, the extent of overlap does not necessarily indicate that competition is occurring. Since 2010, there have been years with very little to virtually no germination of Russian thistle (Park Service 2011a, p. 18; 2012a, p. 4; 2013a p. 4). It is unclear whether the conditions that stimulate germination of Eureka Valley evening-primrose are the same conditions that would stimulate the germination of Russian thistle. For instance, in 2013, there was mass germination of Eureka Valley evening-primrose in the sand flats to the east of Eureka Dunes, but there was little germination of Russian thistle (Park Service 2013a, p. 4), indicating that different environmental factors are needed to trigger mass germination events in these two species. It is possible that, during years when Russian thistle is abundant, this plant may compete with Eureka Valley evening-primrose for resources such as water and nutrients. However, the best available information does not indicate that Russian thistle may outcompete Eureka Valley evening-primrose for these resources either currently or in the future.

At this time, competition with Russian thistle does not appear to be impacting the Eureka Valley evening-primrose at a level that would cause population-level or species-level effects. We have reached this conclusion for the following reasons:

(1) Russian thistle abundance, like that of Eureka Valley evening-primrose, varies annually; therefore, the degree to which these species overlap will vary annually.

(2) The best available information does not indicate that the same conditions that stimulate the germination of Eureka Valley evening-primrose also stimulate germination of Russian thistle, which in turn reduces the likelihood of a competitive relationship between these species either in the short term or long term. The mass germination of Eureka Valley evening-primrose individuals in 2013 implies different environmental factors are needed to get a similar mass germination of Russian thistle to potentially impact Eureka Valley evening-primrose seedlings or established plants. Therefore, this reduces the likelihood of a competitive relationship between these species either in the short-term or long-term.

With regard to Eureka dune grass, we have already noted above that the distribution of Russian thistle occurs across all three dunes. However, the best available data indicate that the potential for Russian thistle to impact Eureka dune grass is unlikely because:

(1) Eureka dune grass typically occurs on the steeper, unstable slopes of the dunes, which appears to limit the establishment of Russian thistle; and

(2) Russian thistle roots are more shallow than those of Eureka dune grass, which reduces the likelihood of potential competition between the two species.

Additionally, based on our analysis of the Park Service's data on Russian thistle presence/absence in 1-ha grid cells, the extent of overlap between these two species at all three dunes combined is 36 percent, ranging from 19 to 91 percent among the three dunes (Service 2013b). Because the Park Service's data is limited to the presence of both species within the same 1-ha grid, these data alone do not indicate that these two species are in close proximity to each other on a smaller spatial scale (which could indicate they are competing for the same resources). However, because the abundance of Eureka dune grass is sparse (i.e., covers 4.3 percent of the entire dune habitat on Eureka Dunes), and Russian thistle is unable to colonize the steeper, unstable slopes where Eureka dune grass occurs, it is unlikely that there is much overlap between these two species at a small spatial scale, even when they both are present in the same 1-ha grid cell. Therefore, based on the best available information, we conclude that competition with Russian thistle does not pose a threat to Eureka dune grass at this time, nor is it expected to become a threat in the future.

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such

measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

The final listing rule, recovery plan, and 2007 5-year status reviews did not identify climate change as potentially impacting Eureka Valley evening-primrose and Eureka dune grass. For this evaluation we used regional projections modeled until 2050, which results in an expected transition to a drier climate (Seager *et al.* 2007, pp. 1181–1184). However, other regional modeling efforts indicate that rainfall will increase throughout the Southwest (Weltzen *et al.* 2003). Of note is that that there is a substantial level of uncertainty associated with such projections for topographically complex regions, such as the western United States (Weltzen *et al.* 2003).

Local projections into the future for Eureka Valley were conducted using ClimateWizard (2011), which evaluates past trends in temperature or rainfall to project future climate conditions:

(1) For temperature, Eureka Valley has increased an average of 0.04 degrees Fahrenheit (°F) to 0.05 °F per year, resulting in a total increase of average temperature of 2.0 °F to 2.5 °F over the last 50 years. Additionally, the temperature is projected to rise an additional 4 °F by the 2050s.

(2) For rainfall, historical trends from 1951 to 2006 in the Eureka Valley indicate that rainfall has increased from 0 to 1 percent. The rainfall is anticipated to be an average of 4 in (102 mm) per year by the 2050s.

What the above projections indicate is that while there has been annual variation in climatic variables (e.g., the amount and timing of rainfall, seasonal low and high temperatures), the norms (or averages) of these variables are starting (and will likely continue) to change in response to climate change.

Long-term data on average rainfall in Eureka Valley are not available due to the lack of a weather station at this location, and trying to estimate annual rainfall or establish trends for this specific area is difficult because data used from surrounding weather stations may not accurately portray rainfall in Eureka Valley (e.g., localized storms). Pavlik (1979a, pp. 14–18; 1979b, pp. 15–20) estimated average annual rainfall in Eureka Valley was 5 in (115 mm). However, the timing of rainfall may be as important as the total amount of rainfall within a given year. For example, for recruitment of Eureka Valley evening-primrose to occur, germination during the fall months needs to be followed by additional rainfall events during the winter months (Pavlik and Barbour 1986, p. 10). Conversely, Eureka dune grass germination is dependent on above-average rainfall during the late summer months (Pavlik and Barbour 1986, pp. 47–59). The Park Service (2012b) recently examined the timing and amount of rainfall (based on a dataset from the closest weather station) between 1987 and 2012, examining the two periods of rainfall that would stimulate germination of Eureka Valley evening primrose (i.e., September through February) and Eureka dune grass (i.e., April through September). While annual rainfall during these two periods is highly variable, between 1987 and 2012, there appears to be a slight increasing trend in the amount of annual rainfall for the first period (September through February) and a decreasing trend for the second period (April through September) (Park Service 2012b). This highlights the complexity in predicting future impacts of climate change on Eureka Valley evening-primrose and Eureka dune grass because the timing of the rainfall may be as important as the total amount of annual rainfall. While the amount of rainfall will determine how deeply water infiltrates into the dune system, the timing will affect how much of this water is lost to evaporation and transpiration (Weltzin et al. 2003, p. 943). These factors (i.e., timing and amount of rainfall) compound the problem of trying to predict how climate change will affect these two species now and into the future.

The analysis conducted by the Park Service (2012b) indicates that the long-term trend in timing of rainfall may be beneficial for the germination of Eureka Valley evening-primrose. Additionally, Eureka Valley evening-primrose has adapted strategies to cope with drought. For instance, established plants may remain dormant and persist underground by their fleshy roots. In contrast, the long-term trend may not favor the germination of Eureka dune grass; however, Eureka dune grass utilizes a C4 carbon fixation pathway, which means this species uses water more efficiently during carbon fixation than plants that use the more common C3 pathway—an adaptation found more frequently in species that occur in hot, dry environments (Peterson and Soreng 2007, p. 8). This indicates that Eureka dune grass is already well-adapted to a hot, dry environment, and we expect these adaptations will help it persist.

Potential impacts from climate change may include a variety of potential changes, such as the following:

(1) A decrease in the level of soil moisture that could increase evaporation and transpiration rates and thus impact the growth or performance of individual plants (Weltzin *et al.* 2003, p. 943).

(2) Altered timing and amount of rainfall could influence germination and possibly establishment of Eureka dune grass (Pavlik and Barbour 1986, p. 47).

(3) The timing of phenological phases, such as flowering, leafing out, and seed release in both Eureka Valley evening-primrose and Eureka dune grass, could change, which has been noted in many other plant species (Bertin 2008, p. 130–131). Additionally, pollinator availability could become limited (Hegland *et al.* 2009) during the time Eureka Valley evening-primrose is flowering, which in turn could affect pollination effectiveness, and consequently the amount of seed it produces.

(4) Lower rainfall could affect survival of individual plants (e.g., reproductive adults, seedlings) and result in less frequent germination events, both of which could affect recruitment. Alternatively, increased rainfall could increase germination and survival, but could also increase competition with invasive, nonnative plants or increase the population size of herbivores. With respect to herbivores, a subsequent decrease in rainfall could result in increased herbivory of certain plants due to a decreased availability in the variety of vegetation.

Although reproduction and survival could be affected by changes in climate conditions as outlined in the potential impacts, both Eureka Valley evening-primrose and Eureka dune grass have evolved in and are adapted to a dry environment with considerable variation in temperature and rainfall (seed banks, rootstock, C4 carbon fixation, etc.). The species have evolved

mechanisms to persist through drought and variable conditions. While there is considerable uncertainty in local climate projections, we expect both species are adapted to withstand drier climate conditions.

In summary, impacts from climate change on Eureka Valley evening-primrose and Eureka Dune grass may occur in the future, although we cannot predict what the effects will be. Regardless, climate change will be affecting the climatic norms that these two species have previously persisted with, and it is probable that this shift could cause stress to both species. Even so, the best available information currently indicates these species are physiologically adapted to the specific hydrologic and soil conditions on the dunes, and the stress imposed by projected climate change currently and in the future is not likely to rise to the level that the long-term viability of Eureka Valley evening-primrose and Eureka dune grass would be impacted. Given the potential for continued climate change in the region, this potential stressor should be evaluated into the future.

Stochastic Events

Stochastic events (environmental and genetic stochasticity) could affect populations of Eureka Valley evening-primrose and Eureka dune grass. The small number of populations and restricted geographic range of the populations of Eureka Valley evening-primrose and Eureka dune grass to Eureka Valley makes them especially vulnerable to stochastic events.

Environmental stochasticity refers to variation in recruitment and mortality rates in response to weather, disease, competition, predation, or other factors external to the population. In our 2007 5-year status reviews, we provided a brief discussion regarding stochastic events, which included windstorms, extended drought (below-average rainfall over a time period greater than the historical range of variability), or a combination of these events with other unidentified catastrophic events and their potential effects, on Eureka Valley evening-primrose and Eureka dune grass (Service 2007a, p. 13; Service 2007b, p. 10). We concluded that neither windstorms nor a variation in rainfall represent a substantial threat to Eureka Valley evening-primrose or Eureka dune grass. Our discussion below elaborates on the potential effects associated with these types of events.

While windstorms may adversely affect individuals of the Eureka Valley evening-primrose or Eureka dune grass populations (by causing individual mortality from uprooting, damaging, or burying plants, or dispersing seed into unsuitable habitat such that it is unavailable for future recruitment), it is unlikely that these events have population-level effects because these species have developed adaptations (e.g., ability to reproduce vegetatively (Pavlik 1979a, p. 68; Pavlik and Barbour 1986, p. 84; Pavlik and Barbour 1988, p. 240), ability to ensure seeds remain near parent plant and disperse into uncolonized habitat (Pavlik 1979a, p. 59; 1979b, p. 71; Pavlik and Barbour 1985, pp. 27, 34, 40, 41) to counter the effects of occupying the dynamic habitat on or around the sand dune (as discussed in the ''Species Description, Taxonomy, and Life History'' sections, above, for each species).

Timing and amount of rainfall (along with other factors that stimulate seed germination) are likely important factors in the germination and establishment of Eureka Valley evening-primrose or Eureka dune grass (Pavlik and Barbour 1986, pp 10, 47–59). In the short term, unfavorable climatic conditions (such as low rainfall) may result in fewer plants, plants producing fewer seeds, and (due to stressful conditions) an increase in mortality of seedlings. This could limit recruitment during this period; however, established individuals would likely survive these conditions and continue to reproduce or go dormant. The seed banks of Eureka Valley evening-primrose and Eureka dune grass would provide some buffer to ensure the persistence of the species when conditions are less favorable. However, we note that over the long term, the increasing time between the favorable climatic conditions that favor the replenishment of the seed bank could potentially affect the amount of the seed bank that is available for future recruitment efforts.

Overall, it is possible that environmental stochasticity (in the form of extreme weather events) could cause stress to Eureka Valley evening-primrose and Eureka dune grass. However, the best available information at this time does not indicate the current and projected future impacts associated with stochastic events would rise to the level that the long-term persistence of Eureka Valley evening-primrose and Eureka dune grass would be impacted.

With regard to genetic stochasticity, low genetic diversity may affect the ability of plant species to adjust to novel or fluctuating environments, survive stochastic events, or maintain high levels of reproductive performance (Huenneke 1991, p. 40). Although Bell (2003, p. 6) concluded that there was low genetic diversity within and among the three populations of Eureka dune grass, there is no past information available regarding the level of genetic diversity within and among the three populations of Eureka dune grass, which would allow us to determine if genetic diversity has changed over time. Additionally, the best available information does not indicate any low genetic diversity within and among the Eureka Valley evening-primrose populations. Consequently, we conclude that genetic stochasticity does not pose a threat to Eureka dune grass or Eureka Valley evening-primrose currently or in the future.

Combination of Factors

A species may be affected by more than one threat in combination (Brook *et al.* 2008). Within the preceding review of the potential impacts to Eureka Valley evening-primrose and Eureka dune grass, we identified multiple potential impacts that may have interrelated impacts that stress one or both species. For example, during years with favorable climatic conditions (such as increased rainfall), food sources (such as plant parts and seeds) become more abundant and may lead to an increase in small mammal populations (Hoffmann 1958, pp. 79109; Johnson and Peek 1984, pp. 8–9; Anderson and Shumar 1986, p. 154; Krebs 1996, pp. 824). However, environmental stochasticity (such as short-term drought) could lead to a decrease in food sources, and the small mammal activity may increase in those areas with remaining vegetation. Further, the stress from increased seed predation, herbivory, or climate change, either singularly or in combination, may reduce the reproductive vigor of Eureka Valley evening-primrose and Eureka dune grass (for example, Dangremond *et al.* 2010, pp. 2261–2270). The species' productivity may be reduced because of these stressors, either singularly or in combination. However, without further study, it is difficult to determine (nor is it necessarily determinable) whether a particular impact is having the greatest effect on the viability of the species, or whether it is exacerbated by or working in combination with other impacts to have cumulative or synergistic effects on the species. While the combination of factors could potentially impact Eureka Valley evening-primrose and Eureka dune grass, the best available information does not indicate that the magnitude or extent of cumulative or synergistic effects is impacting either species to the point that they are affecting the viability of the species at this time or into the future (although the available information indicates some

uncertainty about how synergistic effects could impact both species in the future).

Finding

An assessment of the need for a species' protection under the Act is based on whether a species is in danger of extinction or likely to become so because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. As required by section 4(a)(1) of the Act, we conducted a review of the status of these plants and assessed the five factors to evaluate whether Eureka Valley evening-primrose and Eureka dune grass are endangered or threatened throughout all of their ranges. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed information presented in the 2010 petition, information available in our files and gathered through the status review initiated with our 90-day finding in response to this petition, additional information that became available since the time our 2007 5-year status reviews were completed, and other available published and unpublished information. We also consulted with species experts and land management staff with Death Valley National Park who are actively managing for the conservation of Eureka Valley evening-primrose and Eureka dune grass.

For the purposes of this discussion, we note that the implementation timeline of Death Valley National Park's Wilderness and Backcountry Stewardship Plan (Park Service 2013b) is 20 years. We think this is an appropriate timeframe over which events or effects reasonably can or should be anticipated, or trends extrapolated, because it is the length of time that the Park has planned for managing the habitat of these species, and during which time the Park will be monitoring the status of the populations. Although we expect threats to be managed for at least the length of this timeframe, we expect management of the Eureka Dunes to continue well into the future beyond 20 years. Based on the Park Service's track record for natural resource management and revisions to management plans, we can reasonably expect revisions of management plans to incorporate protective management consistent with the needs of both species well into the future and beyond the existing 20-year stewardship plan timeframe described above. We expect future revisions to be consistent with laws, regulations, and policies governing Federal land management planning; however, we cannot predict the exact contents of future plans. For additional information used to determine foreseeable future for these species, see the discussion of the Park Service's responsibilities and a description of Death Valley National Park's Wilderness and Backcountry Stewardship Plan in the ''Recovery'' and ''Factor D'' sections of the Background Information document (Service 2014, pp. 32–38, 48–51).

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the exposure causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant the threat is. If the threat is significant, it may drive, or contribute to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

Significant impacts to Eureka Valley evening-primrose and Eureka dune grass populations at the time of listing (i.e., OHV activity, and to a lesser extent camping and unauthorized OHV activity) that could have resulted in the extirpation of all or parts of populations have been eliminated or reduced to the extent that they are considered negligible currently, and are expected to continue to be negligible into the future. We also conclude that the previously recognized potential impacts and those identified in this document for both species either have been ameliorated, are negligible, or do not rise to a level of significance, either individually or in combination, such that either species is in danger of extinction throughout its range. We came to this conclusion based on our evaluation of the following potential impacts: The present or threatened destruction, modification, or curtailment of its habitat or range (i.e., unauthorized OHV activity, other unauthorized recreational activities (specifically, horseback riding, sandboarding, campgrounds, and access routes)) (Factor A); overutilization for commercial, recreational, scientific, or educational purposes (Factor B); disease or predation (specifically, herbivory and seed predation) (Factor C); the inadequacy of existing regulatory mechanisms (Factor D); and other natural or human-made factors affecting its continued existence (specifically, other unauthorized recreational activities (i.e., horseback riding, sandboarding, camping, and access routes), competition with Russian thistle, climate change, and stochastic events) (Factor E).

Of the factors identified above, herbivory, seed predation, stochastic events, climate change, and (specifically for Eureka Valley evening-primrose) competition with Russian thistle during years the thistle is abundant have the potential to impact Eureka Valley evening-primrose and Eureka dune grass currently or into the foreseeable future. However, we found that the best available information does not indicate that these stressors are impacting individual populations or each species as a whole across their ranges to the extent that they are of sufficient imminence, intensity, or magnitude to rise to the level of a threatened species (i.e., likely to become an endangered species within the foreseeable future). We came to this conclusion primarily due to the best available information indicating a negligible impact or lack of impact to the species across their ranges, although some may be causing stress to portions of populations within the range of one or both species (e.g., documented herbivory and seed predation at the north end of the Eureka Dunes). Although some of these impacts may continue to cause stress to either or both species, the existing regulatory mechanisms are sufficient to manage the continued existence of Eureka Valley evening-primrose and Eureka dune grass currently and into the foreseeable future.

Finally, it is important to acknowledge the significant commitment made initially by BLM and subsequently by the Park Service in their efforts to provide permanent protection to Eureka Valley evening-primrose and Eureka dune grass and their habitat, as well as ongoing

management, research, and public outreach opportunities.

In conclusion, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by Eureka Valley evening-primrose and Eureka dune grass. After review and analysis of the information regarding threats as related to the five statutory factors, we find that the ongoing threats are not of sufficient imminence, intensity, or magnitude to indicate that these species are presently in danger of extinction throughout all of their ranges. Additionally, no threats exist currently nor are any potential stressors described herein expected to rise to the level that would likely cause either species to become endangered in the foreseeable future throughout all of their ranges.

Significant Portion of the Range

Having examined the status of Eureka Valley evening-primrose and Eureka dune grass throughout all of their ranges, we next examine whether either species could be in danger of extinction, or likely to become so within the foreseeable future, in a significant portion of their ranges. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that have no reasonable potential to be significant or in analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant'' *and* (2) The species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the level of threats to the species is essentially uniform throughout its range, no portion is likely to warrant further consideration.

We consider the ''range'' of Eureka Valley evening-primrose and Eureka dune grass to include three populations each, all encompassed within the three dune systems (Marble Canyon Dunes, Saline Spur Dunes, and the Eureka Dunes) that span a distance of 9 mi (14.4 km) from west to east within Eureka Valley in Death Valley National Park, Inyo County, California. The three populations of each species have likely been present since the beginning of the Holocene era when pluvial lakes retreated during a warming phase, leaving behind the dune systems in Eureka Valley. Historical distribution of Eureka Valley evening-primrose and Eureka dune grass beyond the three currently recognized populations of each species is unknown. In other words, the current distribution of both species is the only known distribution, which has remained generally the same since their distributions were first recorded in 1976.

We considered whether the factors that could cause stress to Eureka Valley evening-primrose and Eureka dune grass individuals or to the populations as a whole might be different at any one of the populations relative to each other. The factors we identified that could still cause stress to both species include: Herbivory, seed predation, stochastic events, climate change, and (specifically for Eureka Valley evening-primrose) competition with Russian thistle during years the thistle is abundant. There are two characteristics of the habitat for these species that could influence the extent to which these factors cause stress to either species: (1) The type of dune system that supports each of the populations, and (2) The extent of the sandy dune habitat that supports each of the populations (please see the ''Environmental Setting'' section of the Background Information document (Service 2014, pp. 4–7) for more information). We compare the three dunes to each other as follows.

TABLE 1—COMPARISON OF DUNE HABITAT CHARACTERISTICS AT THREE DUNE SYSTEMS IN EUREKA VALLEY

Dune system	Type of dune system	Extent of dune habitat (acres (ac) (hectares (ha))
1. Marble Canyon Dunes	Obstacle dune	610 ac (247 ha).
2. Saline Spur Dunes	Obstacle dune	238 ac (96 ha).
3. Eureka Dunes	Sand mountain/Transverse	2,003 ac (811 ha).

The type of dune system is important because of the way each of them intercepts, stores, and delivers moisture (from precipitation) to a plant at critical times in its life cycle, specifically during seed germination (needs moisture closer to the surface where the seeds are), and during growth (needs moisture deeper below the surface where the roots are). As Park Service monitoring over the last 5 years indicates, a ''good'' year for Eureka Valley evening-primrose or Eureka dune grass at one dune system is not necessarily a ''good'' year for either species at another dune system. Although the mechanisms are complex and not entirely understood, it is likely that obstacle dunes have little capacity to store water, and thus intercept and deliver moisture over a shorter period of time. In comparison, the sand mountain type of dune system has a greater capacity to store water, and to deliver moisture to plants over a longer period of time. Therefore, if rainfall were abundant and equal at all three dune systems, the Eureka Dunes would provide an inherent advantage relative to Marble Canyon Dunes and Saline Spur Dunes, with respect to the ability of the dune system to provide sustained moisture for germination and growth of Eureka Valley evening-primrose and Eureka dune grass.

The extent of dune habitat is important because, if rainfall were abundant and equal at all three dune systems, the greater extent of dune habitat would provide more space for Eureka Valley evening-primrose and Eureka dune grass to germinate and grow than at Marble Canyon Dunes and Saline Spur Dunes. While not every hectare of each dune provides suitable conditions for germination and growth of Eureka Valley evening-primrose and Eureka dune grass, a comparison of the

extent of dune habitat is still a useful relative measure of potentially suitable habitat: Eureka Dunes is over three times as large as Marble Canyon Dunes, and eight times as large as Saline Spur Dunes. Thus, if rainfall were abundant and equal at all three dune systems, Eureka Dunes provides an inherent advantage to Eureka Valley evening-primrose and Eureka dune grass relative to Marble Canyon Dunes and Saline Spur Dunes, both with respect to type of dune system and extent of dune habitat, and would theoretically support the largest population of each species.

The factors we identified that could cause stress to Eureka Valley evening-primrose and Eureka dune grass currently or in the future are herbivory, seed predation, stochastic events, climate change, and (specifically for Eureka Valley evening-primrose) competition with Russian thistle during years the thistle is abundant. All of these factors are known to cause stress in plant species; the extent to which they cause stress to Eureka Valley evening-primrose or Eureka dune grass has not been studied in detail. Stress in plant populations can manifest in many forms, ranging from death of individuals to reduced vigor and growth of individuals to reduced reproductive success. In general, small plant populations are more vulnerable than large plant populations to factors that cause stress because there are fewer numbers of individuals to act as a ''reserve'' from which the species can recover. Moreover, once populations become small because of stress caused by one factor, they are more vulnerable to stress caused by other factors, hence the ''combination of factors'' phenomenon as discussed under the Summary of Factors Affecting the Species section. The best available information indicates that the factors that cause stress could be equally present at all three dunes.

Because Marble Canyon Dunes and Saline Spur Dunes are obstacle dunes with less water-holding capacity than Eureka Dunes and comprise a smaller extent of dune habitat than Eureka Dunes, they likely will, over time (under conditions of abundant and equal rainfall), support smaller populations of Eureka Valley evening-primrose and Eureka dune grass than Eureka Dunes. Furthermore, these smaller populations could be more vulnerable to factors that cause stress than the population at Eureka Dunes; therefore, the level of stress to which populations at Marble Canyon Dunes and Saline Spur Dunes are subjected could be higher than the level of stress to which the populations at Eureka Dunes are subjected. However, the best available data at this time do not indicate a higher level of stress at any of the populations/dunes as compared to other populations/dunes. In addition, we think that the three dune systems are close enough in proximity to each other that:

(1) For Eureka Valley evening-primrose, given its abundant seed production in favorable years, migration of propagules from areas of higher concentration to areas of lower concentration likely mitigates for the increased vulnerability of the populations at Marble Canyon Dunes and Saline Spur Dunes as compared to Eureka Dunes (Pavlik and Barbour 1985, pp. 24–53; and see discussion on seed dispersal and metapopulations in Cain *et al.* 2000, p. 1,220).

(2) For Eureka dune grass, given its modest seed production in favorable years and longevity of established individuals, migration of Eureka dune grass propagules from areas of higher concentration to areas of lower concentration over time likely mitigates for the increased vulnerability of the populations at Marble Canyon Dunes and Saline Spur Dunes as compared to Eureka Dunes (Pavlik and Barbour 1985, pp. 24–53; and see discussion on seed dispersal and metapopulations in Cain *et al.* 2000, p. 1,220).

Therefore, it is our conclusion, based on our evaluation of the factors that cause stress to Eureka Valley evening-primrose and Eureka dune grass at the three populations where each occurs, that the factors that cause stress are neither sufficiently concentrated nor of sufficient magnitude to indicate that the species is in danger of extinction, or likely to become so within the foreseeable future, at any of the areas that support populations of either species.

In conclusion, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by Eureka Valley evening-primrose and Eureka dune grass. After review and analysis of the information regarding threats as related to the five statutory factors, we find that the ongoing threats are not of sufficient imminence, intensity, or magnitude to indicate that these species are presently in danger of extinction throughout all or a significant portion of their ranges. Additionally, no threats exist currently nor are any potential stressors described herein expected to rise to the level that would likely cause either species to become endangered in the foreseeable future throughout all or a significant portion of their ranges.

Accordingly, we find that the petitioned action is warranted, that Eureka Valley evening-primrose and Eureka dune grass no longer meet the Act's definition of an endangered species and further do not meet the Act's definition of a threatened species, and we propose to remove both species from the Federal List of Endangered and Threatened Plants.

Effects of This Rule

If finalized, the proposed action would remove Eureka Valley evening-primrose and Eureka dune grass from the List of Endangered and Threatened Plants. The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. The prohibitions under section 9(a)(2) of the Act make it illegal for any person subject to the jurisdiction of the United States to import or export any such species; transport any such species in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale any such species in interstate or foreign commerce; remove and reduce to possession or maliciously damage or destroy any such species from areas under Federal jurisdiction; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Section 7 of the Act requires that Federal agencies consult with us to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of a listed species. If Eureka Valley evening-primrose and Eureka dune grass are removed from the List of Endangered and Threatened Plants, these prohibitions would no longer apply. Delisting Eureka Valley evening-primrose and Eureka dune grass is expected to have no or positive effects in terms of management flexibility to the State and Federal governments. We fully expect that the Park Service would continue to implement its management plans consistent with existing laws, regulations, and policies to conserve Eureka Valley evening-primrose and Eureka dune grass and their habitat. However, we note that funding to carry out monitoring to track these species could be curtailed dependent on Federal budget constraints (Cipra and Fuhrmann 2013).

Future Conservation Measures

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a system to monitor effectively for not less than 5 years the

status of all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. The management practices of, and commitments by, the Park Service under existing laws, regulations, and policies should afford adequate protection to Eureka Valley evening-primrose and Eureka dune grass into the foreseeable future upon delisting, as the entire known ranges of these species occur within Death Valley National Park.

We will work cooperatively with the National Park and other interested parties (prior to delisting should it occur) to develop a strategy to implement appropriate monitoring activities for Eureka Valley evening-primrose and Eureka dune grass for not less than 5 years. The results of such monitoring, if not consistent with a recovered status for one or both species, could trigger additional management actions, trigger additional or extended monitoring, or trigger status reviews or listing actions. We anticipate coordinating with the Park Service, USGS, local universities, and other sources that may be able to contribute funding or resources to assist us in our efforts to monitor these species, thereby providing the information necessary to determine whether protections under the Act should be reinstated. We currently appreciate any information on what should be included in a post-delisting monitoring strategy for these species (see Information Requested section, above).

Given the mission of the Park Service and its past and current stewardship efforts, it is important to note that management for both Eureka Valley evening-primrose and Eureka dune grass has been effective to date, and it is reasonable to expect that management will continue to be effective for both species and their habitat beyond a post-delisting monitoring period, the 20-year timeframe associated with the Wilderness and Backcountry Stewardship Plan (Park Service 2013b), and well into the future. In addition to post-delisting monitoring activities that would occur if this proposed rule becomes final, the Park Service anticipates continuing to manage the Eureka Valley dunes, including such tasks as conducting ranger patrols, maintaining educational signs, and making contact with visitors within the range of the species (Cipra *in litt.* 2013). Additional monitoring or research (beyond post-delisting monitoring requirements) may occur in the future for these and other rare endemics within the Park based on congressional funding and resource levels (Cipra *in litt.* 2013). We will work closely with the Park Service to ensure post-delisting monitoring is conducted if these species are delisted and to ensure future management strategies are implemented (as warranted) to benefit Eureka Valley evening-primrose and Eureka dune grass.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rulemaking documents in plain language. This means that each rulemaking we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We determined we do not need to prepare an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0131 or upon request from the Deputy Field Supervisor, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this proposed rule is the Pacific Southwest Regional Office in Sacramento, California, in coordination with the Ventura Fish and Wildlife Office in Ventura, California (see **FOR FURTHER INFORMATION CONTACT**).

Lists of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

§ 17.12 [Amended]

■ 2. Amend § 17.12(h) by removing the entries for *Oenothera avita* ssp. *eurekensis* and *Swallenia alexandrae* under FLOWERING PLANTS from the List of Endangered and Threatened Plants.

Dated: February 19, 2014.

Stephen Guertin,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2014–04232 Filed 2–26–14; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 79, No. 39

Thursday, February 27, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of March 5 Advisory Committee on Voluntary Foreign Aid Meeting

AGENCY: United States Agency for International Development.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

DATES: Wednesday, March 5, 2013.

Time: 2:00 p.m.–4:00 p.m.

Location: Horizon Room, Ronald Reagan Building.

Agenda

USAID Administrator Rajiv Shah will make opening remarks, followed by panel discussions among ACVFA members and USAID leadership on our vision and core values. The full meeting agenda is available on the ACVFA Web site at *http://www.usaid.gov/who-we-are/organization/advisory-committee.*

Stakeholders

The meeting is free and open to the public. Persons wishing to attend should register online at *http://www.usaid.gov/who-we-are/organization/advisory-committee/get-involved.*

SUPPLEMENTARY INFORMATION: Due to logistical difficulties associated with the meeting, this notice is provided less than 15 calendar days prior to the meeting (see 41 CFR 102–3.150(b)).

FOR FURTHER INFORMATION CONTACT: Jayne Thomisee, 202–712–5506.

Dated: February 20, 2014.

Jayne Thomisee,

Executive Director (A), Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.

[FR Doc. 2014–04316 Filed 2–26–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Assessment Report of Ecological/Social/Economic Sustainability, Conditions, and Trends for the Carson National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of initiating the assessment phase of the forest plan revision for the Carson National Forest.

SUMMARY: The Carson National Forest, located in northern New Mexico, is initiating the forest plan revision process pursuant to the 2012 National Forest System Land Management Planning Rule (36 CFR Part 219). This process results in a revised forest land management plan (forest plan), which describes the strategic direction for management of forest resources on the Carson National Forest over the next ten to fifteen years. The first phase of the process, the assessment phase, is just beginning. The public is invited to contribute information that can be used in the development of the assessment (36 CFR § 219.6). To gather relevant information about conditions and trends in and around the Carson National Forest, the Forest Service will be hosting a series of public forums in late spring/early summer of 2014. Information about public engagement opportunities during the assessment phase and the entire plan revision process will be posted on the Carson National Forest's Web site, which will be continuously updated as the planning process progresses.

DATES: A draft of the assessment report for the revision of the Carson National Forest's forest plan is anticipated to be posted on the following Web site at *www.fs.usda.gov/goto/carsonforestplan* in the fall/early winter 2014. The final assessment is projected to be completed in late winter 2014/2015.

Public forums and meetings associated with the development of the assessment will be announced on the Web site cited above.

It is expected the notice of intent to initiate the forest plan revision for the Carson National Forest will be published in the **Federal Register** in spring 2015.

ADDRESSES: Written comments or questions concerning this notice should be addressed to Carson National Forest, Attn: Plan Revision, 208 Cruz Alta Road, Taos, New Mexico, 87571. Comments may also be sent via email to *carsonplan@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Kevin Naranjo, Forest Planner, 575–758–6221. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

More information on the planning process can also be found on the Carson National Forest Web site at *www.fs.usda.gov/goto/carsonforestplan.*

SUPPLEMENTARY INFORMATION: The National Forest Management Act (NFMA) of 1976 requires every National Forest System (NFS) unit to develop a forest plan. On April 9, 2012, the Forest Service finalized its land management planning rule (2012 Planning Rule), which describes requirements for the planning process and the content of forest plans. Forest plans describe the strategic direction for managing forest resources over ten to fifteen years, and are adaptive and amendable as conditions change over time.

Under the 2012 Planning Rule, the assessment of ecological, social, and economic trends and conditions is the first phase of the planning framework or process. The second phase is guided, in part, by the National Environment Policy Act (NEPA). It includes the preparation of a draft environmental impact statement and revised forest plan for public review and comment, followed by a final environmental impact statement and revised forest plan. The third phase of the process is monitoring and feedback, which is ongoing over the life of the revised forest plan.

This notice announces the start of the first phase of the planning process, which is an assessment to rapidly evaluate existing information about relevant ecological, economic, cultural, and social conditions, trends, and sustainability and their relationship to the Carson National Forest's current forest plan, within the context of the broader landscape.

With this notice, the agency invites other governments, non-governmental parties, and the public to contribute to the development of the assessment. The intent of public participation in the

assessment phase is to gather as much relevant information as possible to inform the plan revision process. Public involvement during this point in the process can also provide opportunities for people to share their concerns about existing conditions and trends and perceptions of risks to social, economic, and ecological systems related to the forest.

As public meetings, forums, and other opportunities for public engagement are scheduled, public notifications will be made and posted on the forest's Web site at *www.fs.usda.gov/goto/carsonforestplan* and information will be sent out to the forest's mailing list. If anyone is interested in being on the forest's mailing list to receive these notifications, please contact Kevin Naranjo, Forest Planner, at the mailing address identified above, by sending an email to *carsonplan@fs.fed.us,* or by telephone 575–758–6221.

Responsible Official

The responsible official for revision of the Carson National Forest's land management plan is Forest Supervisor Juan (Buck) Sanchez, Carson National Forest, 208 Cruz Alta Road, Taos, New Mexico, 87571.

Dated: February 21, 2014.

Juan E. (Buck) Sanchez,

Forest Supervisor.

[FR Doc. 2014–04270 Filed 2–26–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prince of Wales Island Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Prince of Wales Island Resource Advisory Committee (RAC) will meet in Craig, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under Title II of the Act.

DATES: The meeting will be held April 1, 2014 at 10:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Craig Ranger District, 504 9th Street, Craig, Alaska. If you wish to attend via teleconference, please call 907–826–3271 for instructions.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Craig Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rebecca Sakraida, RAC Coordinator, by phone at 907–826–1601 or via email at *rsakraida@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/B41C09B8D0F857FE8825759F004E6742?OpenDocument.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by March 15, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Matthew Anderson, Designated Federal Official, P.O. Box 500, Craig, Alaska 99921; or by email to *mdanderson@fs.fed.us,* or via facsimile to 907–826–2972.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 12, 2014.

Matthew D. Anderson,

District Ranger.

[FR Doc. 2014–04261 Filed 2–26–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–916]

Laminated Woven Sacks From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the Laminated Woven Sacks Committee (''Petitioner''), the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty *Order* on laminated woven sacks from the People's Republic of China (''PRC'').[1] [2] The administrative review covers nine [3] PRC companies for the period of review (''POR'') August 1, 2012, through July 31, 2013. No other party requested review of these nine companies. We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* February 27, 2014.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION: On October 2, 2013, the Department initiated an administrative review of the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation, in Part,* 78 FR 60834 (October 2, 2013) (''*Initiation Notice*'').

[2] *See Notice of Antidumping Duty Order: Laminated Woven Sacks From the People's Republic of China,* 73 FR 45941 (August 7, 2008) (''*Order*'').

[3] The nine companies are: Cangnan Color Make the Bag; Han Shing Corporation Limited; Jiangsu Hotsun Plastics; Ningbo Yong Feng Packaging Co., Ltd.; Polywell Industrial Co.; Shandong Qilu Plastic Fabric Group, Ltd.; Shandong Shouguang Jianyuanchun Co.; Shandong Youlian Subian Co. Ltd.; and Zibo Aifudi Plastic Packaging Co., Ltd.

Order on laminated woven sacks from the PRC covering nine PRC firms for the POR.[4] As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[5] Therefore, all deadlines in this review have been extended by 16 days.

The merchandise covered by the *Order*[6] is laminated woven sacks.[7] Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (''BOPP'') or to an exterior ply of paper that is suitable for high quality print graphics. Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020.[8] The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.

Methodology

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (''the Act''). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://iaaccess.trade.gov.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Background

The *Initiation Notice* states that ''{i}f a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review . . . it must notify the Department within 60 days of publication of this notice in the **Federal Register**.''[9] None of the nine companies initiated for review filed ''no shipment'' certifications. The *Initiation Notice* also notifies the firms initiated for review that they ''must complete, as appropriate, either a separate rate application or certification'' if they want to qualify for a separate rate in this administrative review.[10] None of the nine companies initiated for review filed separate rate certifications or applications. Thus, because none of the nine companies initiated for review have provided the Department with either a ''no shipment'' certification or separate rate eligibility documentation, we preliminarily find that these nine companies should be treated as part of the PRC-wide entity.[11]

Preliminary Results of Review

The Department preliminarily determines that the following dumping margin exists for the period August 1, 2012, through July 31, 2013:

Exporter	Margin (percent)
PRC-Wide Entity [12]	[13] 47.64

Public Comment

Interested parties are invited to comment on these preliminary results and submit written arguments or case briefs within 30 days after the date of publication of this notice, unless otherwise notified by the Department (*see* 19 CFR 351.309(c)(ii)). Parties are reminded that they should not submit new factual information in written arguments or case briefs. Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later (*see* 19 CFR 351.309(d)). Parties who submit case or rebuttal briefs are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.[14]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using IA ACCESS (*see* 19 CFR 351.310(c)). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing.

The Department intends to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

[4] *See Initiation Notice.*

[5] *See* ''Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, 'Deadlines Affected by the Shutdown of the Federal Government,' '' dated October 18, 2013.

[6] *See Order.*

[7] *See* ''Decision Memorandum for the Preliminary Results of the 2012–2013 Administrative Review: Laminated Woven Sacks from the People's Republic of China,'' from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, (''Preliminary Decision Memorandum''), dated concurrently with these results for a complete description of the Scope of the Order.

[8] Additional HTSUS considerations apply. *See* Preliminary Decision Memorandum.

[9] *See Initiation Notice,* 78 FR 60834–60835.

[10] *See id.,* at 60835.

[11] *See* the Preliminary Decision Memorandum.

[12] The companies for which a review was requested and which we preliminarily determine are part of the PRC-wide entity include: Cangnan Color Make the Bag; Han Shing Corporation Limited; Jiangsu Hotsun Plastics; Ningbo Yong Feng Packaging Co., Ltd.; Polywell Industrial Co.; Shandong Qilu Plastic Fabric Group, Ltd.; Shandong Shouguang Jianyuanchun Co.; Shandong Youlian Subian Co. Ltd.; and Zibo Aifudi Plastic Packaging Co., Ltd.

[13] The PRC-wide entity rate was re-calculated from 91.73 percent to 47.64 percent pursuant to *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China,* 77 FR 52683 (August 30, 2012), effective August 21, 2012.

[14] *See,* generally, 19 CFR 351.303 for filing requirements.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. The Department announced a refinement to its assessment practice in non-market economy (''NME'') cases.[15] Pursuant to this refinement in practice, for entries that were not reported by companies examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[16]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate (*i.e.,* the firms listed in footnote 14), the cash deposit rate will be that for the PRC-wide entity; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to the 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 published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.221(b)(4).

Dated: February 20, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. PRC Wide Entity
4. PRC Wide Entity Rate
5. Recommendation

[FR Doc. 2014–04353 Filed 2–26–14; 8:45 am]

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[15] For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*NME Assessment 2011*'').

[16] *See NME Assessment 2011,* 76 FR 65694.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–012]

Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Initiation of Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 27, 2014.

FOR FURTHER INFORMATION CONTACT: Brian Smith and Terre Keaton Stefanova, Office II, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766 and (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On January 31, 2014, the Department of Commerce (Department) received an antidumping duty (AD) petition concerning imports of carbon and certain alloy steel wire rod (steel wire rod) from the People's Republic of China (PRC), officially filed in proper form on behalf of ArcelorMittal USA LLC, Charter Steel, Evraz Pueblo (formerly Evraz Rocky Mountain Steel), Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc., and Nucor Corporation (collectively, ''the petitioners'').[1] The petitioners are domestic producers of steel wire rod. The AD Petition was accompanied by a countervailing duty (CVD) petition concerning imports of steel wire rod from the PRC. On February 4, 2014, the Department requested additional information and clarification of certain areas of the Petition, and on February 7 and 10, 2014, the petitioners filed a response to each request, respectively.[2]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the ''Act''), the petitioners allege that imports of steel wire rod from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioners in support of their allegations.

The Department finds that the petitioners filed this Petition on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. The Department also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the AD investigation that the petitioners are requesting.[3]

Period of Investigation

The period of investigation (POI) is July 1, 2013, through December 31, 2013, in accordance with 19 CFR 351.204(b)(1).

Scope of the Investigation

The product covered by this investigation is steel wire rod from the PRC. For a full description of the scope of the investigation, please see the ''Scope of the Investigation'' in the appendix to this notice.

[1] *See* ''Petition for the Imposition of Antidumping and Countervailing Duties on Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China,'' dated January 31, 2014 (hereafter referred to as the ''Petition''); and the petitioners' February 10, 2014, filing titled, ''Petitioners' Response to Commerce Department Antidumping Supplemental Questionnaire—Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China'' (PRC AD Supplement), at 1.

[2] *See* the petitioners' February 7, 2014, filing titled, ''Petition for the Imposition of Antidumping Duties on Imports of Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Response to General Supplemental Questions'' (General Issues Supplement); *see also* PRC AD Supplement.

[3] *See* ''Determination of Industry Support for the Petition'' section, below.

Comments on the Scope of the Investigation

During our review of the Petition, we solicited information from the petitioners to ensure that the proposed scope language is an accurate reflection of the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations,[4] we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by March 12, 2014, which is 20 calendar days from the signature date of this notice. All comments must be filed on the record of the AD investigation, as well as the concurrent CVD investigation.

Comments on the Product Characteristics for the AD Questionnaire

The Department requests comments from interested parties regarding the appropriate physical characteristics of steel wire rod to be reported in response to the Department's AD questionnaire. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant factors and costs of production accurately, as well as to develop appropriate product-comparison criteria. Interested parties may provide any information or comments that they believe are relevant to the development of an accurate list of physical characteristics. Specifically, interested parties may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe steel wire rod, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, we must receive comments on product characteristics no later than March 12, 2014. Rebuttal comments must be received no later than March 19, 2014.

Filing Requirements

All comments and submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by IA ACCESS by 5 p.m. on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline established by the Department.[5]

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) if there is a large number of producers in the industry, the Department may determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[6] they do so for different purposes and pursuant to a separate and distinct statutory authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[7]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we determined that steel wire rod, as defined in the scope of the investigation, constitutes a single domestic like product and we analyzed industry support in terms of that domestic like product.[8]

In determining whether the petitioners have standing under section

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] 19 CFR 351.303(b)(1). For assistance with IA ACCESS, please visit *https://iaaccess.trade.gov/help.aspx.* The IA Access handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[6] *See* section 771(10) of the Act.

[7] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)); *see also Algoma Steel,* 688. F. Supp. at 644 (''This division of labor has been upheld even where it has resulted in decisions which are difficult to reconcile, as when the class of merchandise found by ITA to be sold at LTFV affects several industries, not all of which are found by ITC to be materially injured.'') (internal citation omitted).

[8] *See* Antidumping Duty Investigation Initiation Checklist: Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China (AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit, Room 7046 of the main Department of Commerce building.

732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section above. To establish industry support, the petitioners provided the production of the domestic like product in 2013 of all supporters of the Petition, and compared this to the total production of the domestic like product for the entire domestic industry.[9] We relied upon data the petitioners provided for purposes of measuring industry support.[10]

Based on information provided in the Petition, supplemental submission, and other information readily available to the Department, we find that the domestic producers who support the Petition account for at least 25 percent of the total production of the domestic like product, in accordance with section 732(c)(4)(A)(i) of the Act.[11] We further find that the domestic producers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition, in accordance with section 732(c)(4)(A)(ii) of the Act.[12] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[13]

The Department finds that the petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they demonstrated sufficient industry support with respect to the AD investigation that they are requesting the Department initiate.[14]

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[15]

The petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; reduced production and shipments; anemic capacity utilization; decline in employment variables; and decline in financial performance.[16] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[17]

Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate an investigation of imports of steel wire rod from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and normal value are discussed in greater detail in the AD Initiation Checklist.

Export Price

The petitioners based export price (EP) on three U.S. price quotes for steel wire rod produced in the PRC and offered for sale to U.S. customers during the POI. To derive the ex-factory price, the petitioners made deductions to U.S. price, where applicable, for U.S. inland freight and insurance, U.S. brokerage and handling expenses, U.S. customs duties, international freight and insurance, foreign brokerage and handling, and foreign inland freight.[18] The petitioners also made an adjustment to U.S. price for the unrebated portion of the value-added tax charged on steel wire rod in the PRC, consistent with the Department's methodological change concerning treatment of VAT in non-market economy proceedings.[19] The petitioners made no other adjustments.

The petitioners estimated U.S. inland freight (inclusive of insurance) based on industry knowledge supported by a declaration (*i.e.,* barge rates) and/or information obtained from *www.freightrateindex.com* (*i.e.,* truck rates). The petitioners also estimated U.S. brokerage and handling expenses based on industry knowledge supported by a declaration. The petitioners calculated international freight (inclusive of insurance) based on data obtained from publicly available U.S. import statistics for the average unit value of insurance and freight for imports of steel wire rod from the PRC during the POI. The petitioners calculated U.S. port fees (inclusive of harbor maintenance and merchandise processing fees) by applying the port fee percentage to the U.S. price (net of all freight and insurance charges). The petitioners calculated foreign brokerage and handling and foreign inland freight using average charges (inclusive of document fees, terminal handling and port charges, and customs clearance charges) for exports from the surrogate country Indonesia,[20] as published in *Doing Business 2014: Indonesia* by the World Bank.

Normal Value

The petitioners state that the Department has treated the PRC as a non-market economy (NME) country in every proceeding in which the PRC has been involved.[21] The presumption of NME status for the PRC has not been revoked by the Department and, therefore, in accordance with section 771(18)(C)(i) of the Act, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the investigation is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and granting of separate rates to individual exporters.

The petitioners contend that Indonesia is the appropriate surrogate country for the PRC because: (1) It is at a level of economic development comparable to that of the PRC; and (2) it is a significant producer of comparable merchandise.[22] Based on the information provided by the petitioners, we conclude that it is appropriate to use Indonesia as a surrogate country for initiation purposes.[23] After initiation of this investigation, interested parties will have the opportunity to submit

[9] *See* Volume I of the Petition, at 4–5 and Exhibit GEN–1.

[10] *See* AD Initiation Checklist, at Attachment II.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *See* Volume I of the Petition, at 13 and Exhibit INJ–1; *see also* General Issues Supplement, at 6.

[16] *See* Volume I of the Petition, at 9–20 and Exhibits GEN–6, and INJ–1 through INJ–5; *see also* General Issues Supplement, at 6 and Exhibit INJ–6.

[17] *See* AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China.

[18] *See* AD Initiation Checklist.

[19] *Id.; see also Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings,* 77 FR 36481 (June 19, 2012).

[20] *See* ''Normal Value'' section below for further discussion of the selection of the surrogate country.

[21] *See* Volume II of the Petition, at 1.

[22] *Id.* at 1–2 and Exhibit PRC–2.

[23] *See* AD Initiation Checklist.

comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production (FOPs) within 30 days before the scheduled date of the preliminary determination.[24]

The petitioners calculated NV using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. The petitioners based NV on the production experience of a major U.S. producer, adjusted for known differences, during the time period July–December 2013.[25] The petitioners assert that, to the best of their knowledge, their consumption rates are similar to the consumption of PRC producers.[26]

The petitioners valued the factors of production using reasonably available, public surrogate country data, specifically, Indonesian import data from the Global Trade Atlas (GTA) for the period April 2013 through September 2013, the most recent six months of data available for Indonesia at the time of filing the Petition.[27] The petitioners excluded from these GTA import statistics imports from NME countries, countries that maintain broadly available export subsidies, and any imports from ''unspecified'' countries.[28] The petitioners added to the Indonesian import values an average inland freight charge reported for importing goods into Indonesia, as reported in *Doing Business 2014: Indonesia* published by the World Bank. The Department determines that the surrogate values used by the petitioners are reasonably available and, thus, are acceptable for purposes of initiation.

The petitioners determined direct and packing materials costs from Indonesian import data from the GTA.[29] The petitioners applied certain conversion factors to align the units of measure with its own FOPs.[30]

The petitioners calculated labor using a 2008 Indonesian wage rate from LABORSTA, a labor database compiled by the International Labor Organization, and adjusted this rate for inflation using the consumer price index (CPI) data for Indonesia published by the International Monetary Fund (IMF).[31]

The petitioners valued electricity using a 2011 Indonesian industry electricity rate from the *2012 Handbook of Energy & Economic Statistics of Indonesia,* and adjusted the rate for inflation using the wholesale price index (WPI) data for Indonesia published by the IMF.[32]

The petitioners valued natural gas using a 2012 value from LNG World News and used data from *www.chemlink.com* to convert the value and adjusted the value to the POI using CPI data from the IMF.[33]

The petitioners did not include water in their cost calculations because they were unable to determine the quantity usage amount.[34]

The petitioners calculated financial ratios (*i.e.,* factory overhead expenses, selling, general, and administrative expenses, and profit) based on the financial statements of Betonjaya Manunggal Tbk. (Betonjaya), an Indonesian manufacturer of steel round bar (a product that the petitioners claim is comparable to steel wire rod), for the year ending December 31, 2012.[35]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of steel wire rod from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV in accordance with section 773(c) of the Act, the petitioners calculated the estimated dumping margins to be 99.32 to 110.25 percent with respect to imports of steel wire rod from the PRC.[36]

Initiation of AD Investigation

Based on our examination of the Petition on steel wire rod from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of steel wire rod from the PRC are being, or likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will issue our preliminary determination no later than 140 days after the publication date of this initiation. For a discussion of evidence supporting our initiation determination, see the AD Initiation Checklist which accompanies this notice.

Respondent Selection and Quantity and Value Questionnaire

In accordance with our standard practice for respondent selection in AD investigations involving NME countries, we intend to issue quantity and value questionnaires to each potential respondent named in the Petition,[37] and will base respondent selection on the responses received. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Enforcement and Compliance Web site (*http://trade.gov/enforcement/news.asp*). Exporters and producers of steel wire rod from the PRC that do not receive quantity and value questionnaires via mail may still submit a quantity and value response, and can obtain a copy from the Enforcement and Compliance Web site. The quantity and value questionnaire must be submitted by all PRC exporters/producers no later than March 13, 2014. All quantity and value questionnaires must be filed electronically using IA ACCESS.

Separate Rates

In order to obtain separate rate status in an NME AD investigation, exporters and producers must submit a separate rate application.[38] The specific requirements for submitting the separate rate application in the PRC investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://trade.gov/enforcement/news.asp* on the date of publication of this initiation notice in the **Federal Register**. The separate rate application will be due 60 days after the publication of this initiation notice. For exporters and producers who submit a separate rate status application and have been selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the Department's AD questionnaire as mandatory

[24] *See* 19 CFR 351.301(c)(3)(i). Note that this is the revised regulation published on April 10, 2013. *See http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt.*

[25] *See* Volume II of the Petition, at 6 and Exhibit PRC–8, and PRC AD Supplement, at Exhibit PRC–S8.

[26] *See* AD Initiation Checklist.

[27] *See* Volume II of the Petition, at Exhibit PRC–12, and PRC AD Supplement, at Exhibit PRC–S12.

[28] *See* PRC AD Supplement, at Exhibit PRC–S12.

[29] *Id.* at 6–7 and Exhibit PRC–12.

[30] *Id.* at Exhibit PRC–12, and PRC AD Supplement, at Exhibit PRC–S12.

[31] *See* Volume II of the Petition, at 8 and Exhibit PRC–13.

[32] *See* PRC AD Supplement, at 10 and Exhibit PRC–16.

[33] *Id.* at 10 and Exhibit PRC–17.

[34] *Id.* at 9.

[35] *See* Volume II of the Petition, at 8–9 and Exhibit PRC–14, and PRC AD Supplement, at Exhibit PRC–S14.

[36] *See* PRC AD Supplement, at Exhibit PRC–S15A through S15E.

[37] *See* General Issues Supplement, at Exhibit GEN–S5.

[38] *See* Policy Bulletin 05.1: Separate—Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's Web site at *http://enforcement.trade.gov/policy/*).

respondents. The Department requires that the PRC respondents submit a response to the separate rate application by the deadline referenced above in order to receive consideration for separate rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[39]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the Government of the PRC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters to be satisfied by the provision of the public version of the Petition to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of steel wire rod from the PRC materially injure, or threaten material injury to, a U.S. industry.[40] A negative ITC determination will result in the investigation being terminated.[41] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: (1) The definition of factual information (19 CFR 351.102(b)(21)), and (2) the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information for this investigation.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in AD and CVD proceedings.[42] The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under section 19 CFR 351.408(c), or to measure the adequacy of remuneration under section 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs & Border Protection (CBP) data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review *Extension of Time Limits; Final Rule,* available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this segment.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[43] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD or CVD investigations or proceedings initiated on or after August 16, 2013, including this investigation.[44] The

[39] *See* Separate Rates and Combination Rates Bulletin at 6 (emphasis added).

[40] *See* section 733(a) of the Act.

[41] *Id.*

[42] *See Extension of Time Limits, Final Rule,* 78 FR 57790 (September 20, 2013).

[43] *See* section 782(b) of the Act.

[44] *See Certifications of Factual Information To Import Administration During Antidumping and*

Continued

formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://enforcement.trade.gov/apo/index.html.*

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: February 20, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately circular cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[FR Doc. 2014–04345 Filed 2–26–14; 8:45 am]

BILLING CODE 3510–DS–P

Countervailing Duty Proceedings, 78 FR 42678 (July 17, 2013) (*Final Rule*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–994, A–851–803, A–428–842, A–588–871, A–580–871, A–455–804, A–821–821]

Grain-Oriented Electrical Steel From the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Postponement of Preliminary Determinations in the Antidumping Duty Investigations

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James at (202) 482–1131 or (202) 482–0649, respectively, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2013, the Department of Commerce (the Department) initiated the antidumping investigations on grain-oriented electrical steel from the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation.[1] The notice of initiation stated that, unless postponed, the Department would issue its preliminary determinations for these investigations no later than 140 days after the date of the initiation in accordance with section 773(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1). The preliminary determinations currently are due no later than March 13, 2014.

Postponement of the Preliminary Determinations

On February 10, 2014, more than 25 days before the scheduled preliminary determinations, AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers (the Petitioners), pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e), made a timely request for a 50-day postponement of the preliminary determinations in these investigations.[2] The Petitioners noted in their request that this extension will provide additional time for the Department to continue to gather additional information from respondents and perform required analysis.

The Department has found no compelling reason to deny the request and, therefore, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), the Department is postponing the deadline for the preliminary determinations to no later than the 190th day after the date on which the investigations were initiated, or May 2, 2014. In accordance with section 735(a)(1) of the Act, the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 21, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–04351 Filed 2–26–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Grain-Oriented Electrical Steel From the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Initiation of Antidumping Duty Investigations,* 78 FR 65283 (October 31, 2013).

[2] *See* Letter from Petitioners to Secretary of Commerce, ''Antidumping Investigations of Grain-Oriented Electrical Steel (''GOES'') from China, Czech Republic, Germany, Japan, South Korea, Poland, and Russia: Petitioners' Request for Extension of Preliminary Determination,'' dated February 10, 2014.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 27, 2014.

SUMMARY: The Department of Commerce (''Department'') determined that the request described below for a new shipper review of the antidumping duty order on wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC'') meets the statutory and regulatory requirements for initiation. The period of review (''POR'') for the new shipper review is January 1, 2013 through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill, AD/CVD Operations, Office IV, Enforcement and Compliance,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3518.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on wooden bedroom furniture from the PRC was published on January 4, 2005.[1] On January 30, 2014, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214(c), the Department received a timely request for a new shipper review from Wuxi Yushea Furniture Co., Ltd. (''Wuxi Yushea'').[2] On February 7, 2014, the Department received entry data from U.S. Customs and Border Protection (''CBP'').[3] We also requested entry documents from CBP in order to confirm certain information reported by Wuxi Yushea. The continuation of the new shipper review will be contingent upon confirmation of the information reported in the initiation request.

Wuxi Yushea stated that it is the producer and exporter of the subject merchandise upon which its request for a new shipper review is based. Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Wuxi Yushea certified that it did not export wooden bedroom furniture to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Wuxi Yushea certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported wooden bedroom furniture to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Wuxi Yushea also certified that its export activities were not controlled by the central government of the PRC.[4]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Wuxi Yushea submitted documentation establishing the following: (1) The date on which it first shipped wooden bedroom furniture for export to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[5]

The Department conducted a CBP database query and confirmed by examining the results of the CBP data query that Wuxi Yushea's subject merchandise entered the United States during the POR specified by the Department's regulations.[6]

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), and based on the information on the record, the Department finds that Wuxi Yushea meets the threshold requirements for initiation of a new shipper review of its shipment(s) of wooden bedroom furniture from the PRC.[7] However, if the information supplied by Wuxi Yushea is later found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review or apply adverse facts available pursuant to section 776 of the Act, depending upon the facts on the record. The POR for the new shipper review of Wuxi Yushea is January 1, 2013, through December 31, 2013.[8] Pursuant to 19 CFR 351.221(c)(1)(i), the Department will publish the notice of initiation of a new shipper review no later than the last day of the month following the anniversary or semiannual anniversary month of the order. The Department intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 90 days after the date the preliminary results are issued.[9]

It is the Department's usual practice, in cases involving non-market economies (''NME''), to require that a company seeking to establish eligibility for an antidumping duty rate separate from the NME-wide entity to provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Wuxi Yushea which will include a separate rate section. The review of the exporter will proceed if the response provides sufficient indication that the exporter is not subject to either *de jure* or *de facto* government control with respect to its exports of wooden bedroom furniture.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject merchandise from Wuxi Yushea in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Wuxi Yushea exports and produces the subject merchandise, the sales of which form the basis of its new shipper review request, we will instruct CBP to permit the use of a bond only for entries of subject merchandise which the respondent exported and produced.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: February 21, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–04335 Filed 2–26–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–985]

Xanthan Gum From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 27, 2014.

SUMMARY: The Department of Commerce (''Department'') determined that the request described below for a new shipper review of the antidumping duty order on xanthan gum from the People's Republic of China (''PRC'') meets the statutory and regulatory requirements for initiation. The period of review (''POR'') for the new shipper review is July 19, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander, AD/CVD Operations, Office IV, Enforcement and

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[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005).

[2] *See* Letter from Yushea to the Secretary of Commerce ''Wooden Bedroom Furniture from the People's Republic of China: New Shipper Review Request for Wuxi Yushea Furniture Co., Ltd.,'' dated January 30, 2014.

[3] *See* Memorandum to the File through Abdelali Elouaradia, Director, AD/CVD Operations, Office IV ''Initiation of Antidumping New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: Wuxi Yushea Furniture Co., Ltd. Initiation Checklist,'' dated concurrently with this notice (''Initiation Checklist''), at items 14–17.

[4] *See, generally,* Initiation Checklist.

[5] *Id.*

[6] *See* 19 CFR 351.214(g)(1)(i)(A).

[7] *See, generally,* Initiation Checklist.

[8] *See* 19 CFR 351.214(g)(1)(i)(A).

[9] *See* section 751(a)(2)(B)(iv) of the Act.

Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0182.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on xanthan gum from the PRC on July 19, 2013.[1] On January 10, 2014, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214(c), the Department received a timely request for a new shipper review from Meihua Group International Trading (Hong Kong) Limited (''Meihua Hong Kong''), Langfang Meihua Bio-Technology Co., Ltd. (''Meihua Bio-Technology'') and Xinjiang Meihua Amino Acid Co., Ltd. (''Meihua Amino Acid'') (collectively ''Meihua'').[2] On January 23, 2014, the Department received entry data from U.S Customs and Border Protection (''CBP'') relating to this request for a new shipper review.[3] In addition, the Department requested that CBP provide entry documents pertaining to the entry that is subject to this new shipper review in order to confirm certain information reported in the Initiation Request.[4] The continuation of the new shipper review will be contingent upon confirmation of the information reported in the Initiation Request.

Meihua reported that the sale of subject merchandise upon which the request for the new shipper review is based, was made through Meihua Hong Kong and the subject merchandise was produced by Meihua Amino Acid.[5] Meihua did not state that Meihua Bio-Technology either sold or produced the subject merchandise on which the request for a new shipper review is based.[6] However, Meihua requests that the Department review the affiliation of the three companies named above, find them to be a single entity, and initiate a new shipper review of the collapsed entity. Because it is not the Department's practice to consider collapsing producers or treating two or more parties as a single entity at the initiation stage of a new shipper review, we have not treated the three companies as a single entity for purposes of this initiation. Affiliation and collapsing issues can be raised and considered during the course of the new shipper review.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Meihua Hong Kong and Meihua Amino Acid certified that they did not export xanthan gum to the United States during the period of investigation (''POI'').[7] In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Meihua Hong Kong and Meihua Amino Acid certified that, since the initiation of the investigation, they have never been affiliated with an exporter or producer that exported xanthan gum to the United States during the POI, including those not individually examined during the investigation.[8] As required by 19 CFR 351.214(b)(2)(iii)(B), Meihua Hong Kong and Meihua Amino Acid also certified that their export activities were not controlled by the government of the PRC.[9]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Meihua Hong Kong submitted documentation establishing the following: (1) The date on which it first shipped xanthan gum for export to the United States and the date on which the xanthan gum was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[10]

The Department conducted a CBP database query and confirmed by examining the results of the CBP data query that Meihua Amino Acid's subject merchandise entered the United States during the POR specified by the Department's regulations.[11]

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), and based on the information on the record, the Department finds that Meihua Hong Kong meets the threshold requirements for initiation of a new shipper review of its shipment of xanthan gum from the PRC.[12] However, if the information supplied by Meihua Hong Kong is later found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review or apply facts available pursuant to section 776 of the Act, depending upon the facts on the record. The POR for the new shipper review of Meihua Hong Kong is July 19, 2013, through December 31, 2013.[13] Pursuant to 19 CFR 351.221(c)(1)(i), the Department will publish the notice of initiation of a new shipper review no later than the last day of the month following the anniversary month or semiannual anniversary month of the order. The Department intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 90 days after the date the preliminary results are issued.[14]

It is the Department's usual practice, in cases involving non-market economies (''NME''), to require that a company seeking to establish eligibility for an antidumping duty rate separate from the NME-wide entity to provide evidence of the absence of *de jure* and *de facto* government control over the company's export activities. Accordingly, the Department will issue a questionnaire to Meihua Hong Kong which will include a section requesting information with regard to its export activities for the purpose of establishing Meihua Hong Kong's eligibility for a separate rate. The review of Meihua Hong Kong will proceed if the response provides sufficient indication that Meihua Hong Kong is not subject to either *de jure* or *de facto* government control with respect to its exports of subject merchandise.

The Department will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for entries of subject

[1] *See Xanthan Gum From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 43143 (July 19, 2013) (''*Order*'').

[2] *See* Letter to the Secretary of Commerce ''Re: Xanthan Gum from the People's Republic of China Entry of Appearance and Request for New Shipper Review,'' dated January 10, 2014 (''Initiation Request'').

[3] *See* Memorandum to the File from Howard Smith, Program Manager, AD/CVD Operations, Office IV regarding ''U.S. Customs and Border Protection Data; Customs Query Results for Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Bio-Technology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd.,'' dated concurrently with this notice.

[4] *See* Memorandum to Michael Walsh, Director, AD/CVD/Revenue Policy & Programs, Office of International Trade, U.S. Customs and Border Protection, from Abdelali Elouaradia, Director Office IV, AD/CVD Operations, Enforcement and Compliance, ''Request for U.S. Entry Documents—Xanthan Gum from the People's Republic of China (A–570–985),'' dated January 31, 2014.

[5] *See* Initiation Request at 2.

[6] *Id.*

[7] *Id.* at 3.

[8] *Id.* at 3.

[9] *Id.* at 3.

[10] *Id.* at Exhibit 2.

[11] *See* 19 CFR 351.214(g)(1)(i)(A).

[12] *See, generally,* Memorandum to the File through Abdelali Elouaradia, Director, AD/CVD Operations, Office IV ''Initiation of Antidumping New Shipper Review of Xanthan Gum from the People's Republic of China: Meihua Group International Trading (Hong Kong) Limited Initiation Checklist,'' dated concurrently with this notice.

[13] *See* 19 CFR 351.214(g)(1)(ii)(B).

[14] *See* section 751(a)(2)(B)(iv) of the Act; 19 CFR 351.214(i).

merchandise from Meihua Hong Kong in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Meihua Hong Kong certified that it exported the subject merchandise that was produced by Meihua Amino Acid and that such merchandise is the subject of this new shipper review, the Department will apply the bonding privilege only for subject merchandise produced by Meihua Amino Acid and exported by Meihua Hong Kong.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: February 21, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–04340 Filed 2–26–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–013]

Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 27, 2014.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor at (202) 482–4007 or Irene Darzenta Tzafolias at (202) 482–0922, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On January 31, 2013, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of carbon and certain alloy steel wire rod (steel wire rod) from the People's Republic of China (PRC), filed in proper form, on behalf of ArcelorMittal USA LLC, Charter Steel, Evraz Pueblo (formerly Evraz Rocky Mountain Steel), Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc., and Nucor Corporation (collectively, the petitioners).[1] The CVD petition was accompanied by an antidumping duty (AD) petition with respect to the PRC.[2] The petitioners are domestic producers of steel wire rod. On February 5, 2014, the Department requested information and clarification for certain portions of the petition.[3] The petitioners filed their response to this request on February 11, 2014.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Government of the PRC (GOC) is providing countervailable subsidies (within the meaning of sections 701 and 771(5) of the Act) with respect to imports of steel wire rod from the PRC, and that imports of steel wire rod from the PRC are materially injuring, and threaten material injury to, the domestic industry producing steel wire rod in the United States. The Department finds that the petitioners filed the petition on behalf of the domestic industry because the petitioners are interested parties as defined in sections 771(9)(C) and (D) of the Act, and that the petitioners demonstrated sufficient industry support with respect to the initiation of the investigation the petitioners are requesting.[5]

Period of Investigation

The period of investigation (POI) is January 1, 2013, through December 31, 2013.

Scope of Investigation

The product covered by this investigation is steel wire rod from the PRC. For a full description of the scope of this investigation, see ''Scope of Investigation'' at Appendix I of this notice.

Comments on Scope of Investigation

During our review of the petition, the Department issued questions to, and received responses from, the petitioners pertaining to the proposed scope in order to ensure that the scope language in the petition would be an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the Preamble to the regulations,[6] we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by 5:00 p.m. EST on March 12, 2014. All comments must be filed on the records of the PRC CVD investigation, as well as the concurrent PRC AD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 1870, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.[7]

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the GOC for consultations with respect to the petition.[8] Consultations were held with the GOC on February 18, 2014.[9]

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25

[1] *See* Petition for the Imposition of Countervailing Duties on Imports of Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China, dated January 31, 2013 (CVD petition or petition).

[2] *See* Petition for the Imposition of Antidumping Duties on Imports of Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China, dated January 31, 2013 (AD petition).

[3] *See* Petition for the Imposition of Countervailing Duties on Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Supplemental Questions, dated February 5, 2014.

[4] *See* Petitioners' Response to Commerce Department Request for Petition Clarifications—Carbon and Certain Steel Wire Rod from the People's Republic of China, dated February 11, 2014.

[5] *See* ''Determination of Industry Support for the Petition'' below.

[6] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See* 19 CFR 351.303(b). Information regarding IA ACCESS assistance can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[8] *See* Letter of Invitation Regarding Countervailing Duty Petition on Carbon and Alloy Steel Wire Rod from the People's Republic of China, dated January 31, 2014.

[9] *See* Memorandum to the File, ''Consultations with Official from the Government of the People's Republic of China on the Countervailing Duty Petition Regarding Carbon and Alloy Steel Wire Rod from the People's Republic of China,'' dated February 19, 2014.

percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) if there is a large number of producers in the industry, the Department may determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[10] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[11]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we determined that steel wire rod, as defined in the scope of the investigation, constitutes a single domestic like product and we analyzed industry support in terms of that domestic like product.[12]

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section above. To establish industry support, the petitioners provided the production of the domestic like product in 2013 of all supporters of the petition, and compared this to the total production of the domestic like product for the entire domestic industry.[13] We relied upon data the petitioners provided for purposes of measuring industry support.[14]

Based on information provided in the petition, supplemental submission, and other information readily available to the Department, we determine that the petitioners have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product.[15] Based on information provided in the petition, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[16]

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate.[17]

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. The petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[18]

The petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; reduced production and shipments; anemic capacity utilization; decline in employment variables; and decline in financial performance.[19] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[20]

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested

[10] *See* section 771(10) of the Act.

[11] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[12] *See* Countervailing Duty Investigation Initiation Checklist: Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China (CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit, Room 7046 of the main Department of Commerce building.

[13] *See* Volume I of the Petition, at 4–5 and Exhibit GEN–1.

[14] *See* CVD Initiation Checklist, at Attachment II.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *See* Volume I of the Petition, at 13 and Exhibit INJ–1; *see also* General Issues Supplement to the Petition, dated February 7, 2014 (General Issues Supplement), at 6.

[19] *See* Volume I of the Petition, at 9–20 and Exhibits GEN–6, and INJ–1 through INJ–5; *see also* General Issues Supplement, at 6 and Exhibit INJ–6.

[20] *See* CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China.

party files a CVD petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. In the petition, the petitioners allege that producers/exporters of steel wire rod in the PRC benefited from countervailable subsidies bestowed by the government. The Department has examined the petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of steel wire rod from the PRC receive countervailable subsidies from the government.

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on certain alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, see PRC CVD Initiation Checklist.

A public version of the initiation checklist is available on IA ACCESS and at *http://trade.gov/enforcement/news.asp*.

Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of subject merchandise during the POI under the following Harmonized Tariff Schedule of the United States (HTS) numbers: 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, 7227.90.6035, and 7227.90.6085.[21] We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO shortly after the announcement of this case initiation. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found at *http://enforcement.trade.gov/apo/*.

Interested parties may submit comments regarding the CBP data and respondent selection by 5:00 p.m. EST on the seventh calendar day after publication of this notice. Comments must be filed in accordance with the filing requirements stated above. If respondent selection is necessary, we intend to base our decision regarding respondent selection upon comments received from interested parties and our analysis of the record information within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the petitions have been provided to the GOC via IA ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the petition to each known exporter (as named in the petition), as provided in 19 CFR 351.203(c)(2).

ITC Notification

We notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the petition was filed, whether there is a reasonable indication that imports of steel wire rod from the PRC are materially injuring, or threatening material injury to, a U.S. industry.[22] A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[23] Parties are hereby reminded that the Department issued a final rule with respect to certification requirements, effective August 16, 2013. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[24] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Extension of Time Limits

On September 20, 2013, the Department published *Extension of Time Limits, Final Rule,* 78 FR 57790 (September 20, 2013), which modified one regulation related to AD and CVD proceedings regarding the extension of time limits for submissions in such proceedings (19 CFR 351.302(c)). These modifications are effective for all segments initiated on or after October 21, 2013, and thus are applicable to this investigation. Please review the final rule, available at *http://www.gpo.gov/*

[21] While HTS number 7227.90.6085 is not included in the scope, information in the petition indicates that certain subject merchandise was classified under this number during the POI. *See* Volume I of the Petition, at 8.

[22] *See* section 703(a) of the Act.

[23] *See* section 782(b) of the Act.

[24] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at the following: *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

fdsys/pkg/FR-2013-09-20/html/2013-22853.htm prior to requesting an extension.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: February 20, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately circular cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[FR Doc. 2014–04343 Filed 2–26–14; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2011–0081]

CPSC Workshop on Potential Ways To Reduce Third Party Testing Costs Through Determinations Consistent With Assuring Compliance

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of meeting and request for comments.

SUMMARY: The Consumer Product Safety Commission (CPSC, Commission, or we) staff is holding a workshop on potential ways to reduce third party testing costs through determinations consistent with assuring compliance. We invite interested parties to participate in or attend the workshop and to submit written comments.

DATES: The workshop will be held from 9 a.m. to 4 p.m. on April 3, 2014. Individuals interested in serving on panels or presenting information at the workshop should register by March 13, 2014; all other individuals who wish to attend the workshop should register by March 27, 2014. The workshop will also be available through a webcast, but viewers will not be able to interact with the panels and presenters. Written comments must be received by April 17, 2014.

ADDRESSES: The workshop will be held at the CPSC's National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850. There is no charge to attend the workshop. Persons interested in serving on a panel, presenting information, or attending the workshop should register online at: *http://www.cpsc.gov/meetingsignup,* and click on the link titled, ''Potential Ways to Reduce Third Party Testing Costs through Determinations Consistent with Assuring Compliance Workshop.''

You may submit comments, identified by Docket No. CPSC–2011–0081, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through: *http://www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier, preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov*, and insert the Docket No. CPSC–2011–0081, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Campbell, Directorate for Engineering Sciences, 5 Research Place, Rockville, MD 20850; telephone 301–987–2024; email: *jcampbell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. What does the law require?

The Consumer Product Safety Improvement Act of 2008 (CPSIA) established limits for the maximum lead content in substrate for accessible component parts of children's products and for the maximum content limit of six phthalates for children's toys and child care articles. Currently, the maximum lead content limit for accessible component parts of children's products is 100 parts per million (ppm), and the maximum phthalate content limit is 0.1 percent (1000 ppm). Additionally, the CPSIA made ASTM F963–07, *Standard Consumer Safety Specification for Toy Safety,* or any successor version of the standard that the Commission does not reject, a mandatory consumer product safety standard. Currently, ASTM F963–11 (Toy Standard) is the mandatory version of the standard. Table 1 of section 4.3.5 of ASTM F963–11 lists the limits for the soluble amounts of eight elements (antimony, arsenic, barium, cadmium, chromium, lead, mercury, and selenium) allowable in toy substrates.

The CPSIA generally requires that children's products that are subject to a CPSC children's product safety rule

must be tested by a third party CPSC-accepted laboratory for compliance with applicable CPSC rules. 15 U.S.C. 2063(a)(2).[1] Public Law 112–28 (August 12, 2011) (Pub. L. 112–28) directed the CPSC to seek comment on ''opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation.''

B. What actions has the Commission taken?

In response to Public Law 112–28, the Commission published in the **Federal Register** a Request for Comment (RFC) titled, *Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens.*[2] As directed by the Commission, staff submitted a briefing package [3] to the Commission that described opportunities that the Commission could pursue to potentially reduce the third party testing costs consistent with assuring compliance.

In FY 2013, subsequent to fulfilling Public Law 112–28's requirement that the Commission solicit and review comments regarding potential opportunities to reduce the cost of third party testing requirements consistent with assuring compliance, the Commission chose to direct staff to develop a Request for Information (RFI) on four such potential opportunities, asking for information on the following issues:

- Are there materials that qualify for a determination, under the Commission's existing determinations process, that do not, and will not, contain higher-than-allowed soluble concentrations of any of the eight elements specified in section 4.3.5 of ASTM F963–ll?
- Are there materials that qualify for a determination, under the Commission's existing determinations process, that do not, and will not, contain any prohibited phthalates above their allowed content limit of 0.1 percent, and thus, would not be subject to third party testing?
- Are there any adhesives used in manufactured woods that can be determined not to contain lead in amounts above 100 ppm, and thus, would not be subject to third party testing?
- Can the process by which materials are determined not to contain lead in amounts above 100 ppm be expanded to include synthetic food additives?

The RFI was published in the **Federal Register** on April 16, 2013.[4] The comment period for the RFI closed on June 17, 2013. The Commission received eight comments. The Commission's FY 14 Operating Plan directed staff to ''. . . undertake additional necessary research and/or necessary testing with priority given to those materials most likely to provide the widest scope of relief.'' To obtain information and evidence to further explore the possibilities for reducing the costs of third party testing through rulemaking, CPSC staff is conducting a workshop focusing on determinations.

II. What are we trying to accomplish with the workshop?

The goal of the workshop is to provide CPSC staff with information and evidence concerning possible determinations that certain materials, irrespective of their manufacturing origin or manufacturing process, comply with the applicable content or solubility limits of applicable children's product safety rules with a high degree of assurance,[5] without requiring third party testing.[6] Staff seeks information concerning the factors relevant to demonstrating a high degree of assurance of compliance to the applicable children's product safety rules, including consideration of raw material sourcing, the manufacturing processes used, whether recycled materials are or may be included, and the potential for contamination.

III. What topics will the workshop address?

We plan to discuss the three areas in which determinations may be made: Lead content, phthalate content, and the solubility of the eight elements listed in the Toy Standard.

In each case, staff is interested in obtaining information regarding worldwide production of materials used in children's products, including current and past approaches, rather than attestations that a particular manufacturer or brand does not include the chemical of interest. Because determinations encompass all production of a material (which may include future production by new entrants), an attestation by a current manufacturer is likely to be of limited utility in supporting a staff recommendation of a determination that must apply to all current and future manufacturers.

CPSC staff is interested in obtaining information on the following topics:

A. Phthalates Content

Should staff consider a determination recommendation regarding the six prohibited phthalates, such a determination would identify materials that do not, and will not, contain the prohibited phthalates in concentrations above 0.1 percent (1000 ppm). Phthalates, unlike naturally occurring elements, are man-made chemicals, and are used intentionally in specific applications. Additionally, certain materials or processing conditions (such as extremely high temperatures) inherently may preclude or eliminate the presence of phthalates. These factors might be used as part of a method to identify materials that do not, and will not, contain the banned phthalates, regardless of the manufacturer or manufacturing process used. Additional information is sought on this issue.

A determination that a material does not, and will not, contain the prohibited phthalates above 0.1 percent could be similar to the lead determinations in 16 CFR 1500.91. Such a determination would identify materials that intrinsically do not contain the prohibited phthalates or are subject to some factor in their manufacture, such as high temperatures or a deleterious effect on the performance of the material that precludes the presence of the prohibited phthalates above 0.1 percent. To consider this possibility, staff is interested in learning:

- What specific data should staff consider when deciding whether to recommend that the Commission make a determination?
- How can staff be assured that a material, regardless of its origin, manufacturing process, potential for contamination or any other factor, would continue to comply with the phthalates limit indefinitely into the future as the material continues to be produced?
- What kind of follow-up activities should be required to assure continued compliance of a material?
- What other technical, practical, or implementation issues should CPSC staff consider before possibly making recommendations to the Commission regarding phthalates determinations?
- What materials would provide the greatest cost savings if the Commission made a determination that the material

[1] *See also* 16 CFR part 1107.

[2] *http://www.cpsc.gov/PageFiles/103251/3ptreduce.pdf.*

[3] *http://www.cpsc.gov/PageFiles/129398/reduce3pt.pdf.*

[4] *http://www.gpo.gov/fdsys/pkg/FR-2013-04-16/pdf/2013-08858.pdf.*

[5] *High degree of assurance* means an evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture. 16 CFR 1107.2.

[6] Regardless of any third party testing relief provided, compliance with the applicable children's product safety rules, including those for lead and phthalates content, is always required.

did not contain the prohibited phthalates above 0.1 percent? Why?

The 2009 Statement of Policy [7] listed examples of materials that may contain phthalates. Those materials are:

- Polyvinyl chloride (PVC) and related polymers, such as polyvinylidene chloride (PVDC), and polyvinyl acetate (PVA);
- Soft or flexible plastics, except polyolefins;
- Soft or flexible rubber, except silicone rubber and natural latex;
- Foam rubber or foam plastic, such as polyurethane (PU);
- Surface coatings, non-slip coatings, finishes, decals, and printed designs;
- Elastic materials on apparel, such as sleepwear;
- Adhesives and sealants; and
- Electrical insulation.

Other materials, such as other plastics, inks, air fresheners, and scented products, may contain phthalates.

To identify materials that could contain phthalates, and thus, cannot meet the requirements for a determination, staff is interested in learning:

- What materials should always require third party testing because of potential phthalate content above 0.1 percent? Why?
- What specific data or other information should be sufficient to characterize a material as potentially containing one or more of the prohibited phthalates, and thus, always require third party testing for compliance to the phthalates limit?

Phthalates are added to plastics to make the resulting material more flexible. We are seeking information and evidence regarding whether phthalates are uniformly excluded from specific plastics such that the plastic has no application involving the addition of phthalates at levels approaching 0.1 percent, even considering any potential recycled or reclaimed materials. Staff seeks information and evidence relating to a potential recommendation that specific plastics that potentially meet these requirements do not, and will not, contain the prohibited phthalates above 0.1 percent. Staff is interested in learning:

- What raw materials are used, could be used, or may be used to create plastics that meet these requirements, as well as information about the possibility of those materials containing or being exposed to any prohibited phthalate?
- Information about the potential use of recycled content in these plastics, and the possibility that phthalates may be included at noncompliant levels?
- Information about the possibility or likelihood of contamination of the component part or finished product with a prohibited phthalate?
- How or why continued manufacture, regardless of origin, would continue to be compliant with the phthalates limit?
- How the Commission might effectively address new applications or methods of production of plastics that may include the addition of phthalates or otherwise result in unacceptable levels of phthalates?
- What other technical, practical, or implementation issues should CPSC staff consider before possibly making recommendations to the Commission regarding a phthalates determination for a plastic?
- What would be the potential cost savings if such a determination were recommended and adopted, especially considering that compliance with the underlying standard(s) would still be required?

B. Lead Content

Third party testing requirements impose a burden on certifiers of children's products to assure that certifiers' products comply with the applicable children's product safety rules. However, testing might not be required if the Commission has evidence that establishes with a high degree of assurance that the material does not, and will not, contain lead in substrate in amounts above 100 ppm. The lead determinations in 16 CFR 1500.91 list materials that the Commission has determined do not exceed 100 ppm lead content, and thus, are not subject to third party testing. The procedures and requirements for determinations regarding lead content of materials are listed in 16 CFR 1500.89.

If the Commission could identify additional materials that do not, and will not, contain lead in amounts above 100 ppm, the Commission could add these materials to the list in 16 CFR 1500.91. Staff is interested in learning:

- For manufactured materials, what specific information and data should staff assess in considering a recommendation that the material's production does not, and will not, result in a lead content above 100 ppm?
- How lead in the recycling stream can be kept from rendering a material noncompliant?
- How the potential for contamination is addressed by all manufacturers of a material?
- What specific information and data staff should obtain to be assured that continued production of a material, regardless of its origin, will continue to be compliant with the lead content limit without requiring third party testing?
- What other information the staff should consider before potentially making recommendations to the Commission regarding a determination for lead content?
- What changes would you recommend to improve the procedures of 16 CFR 1500.89 in furtherance of the Commission's specific determinations-related direction to staff? What additional specific information and data should staff assess in considering a recommendation that a determination be made that a material intrinsically does not, and will not, contain lead above 100 ppm? Is this information obtainable?
- What additional lead determinations would provide the greatest cost savings, assuming that the determinations have a satisfactory legal and evidentiary basis and are adopted by the Commission?

C. The Eight Elements Listed in the Toy Standard

A possible determination could identify materials that do not, and will not, contain the eight elements listed in the Toy Standard, either with respect to chemical content or to solubility of the elements at levels that do not exceed the allowable limits. Because the Commission intends any additional determinations to reduce the testing costs consistent with assuring compliance, a candidate material for a determination must comply with the limits for all eight elements. The testing costs may not be reduced substantially if content or solubility testing is still required for one or more of the eight elements.

Regarding the eight elements listed in the Toy Standard, staff is interested in learning:

- Which materials, by their nature, do not, and will not contain any of the eight elements in content above their solubility limits?
- Which materials have a solubility of all seven elements other than lead that is low enough for a determination to possibly be recommended that the material will comply with ASTM F963–11, regardless of the elements' content levels (lead content must not exceed 100 ppm for substrates, and 90 ppm for surface coatings)?
- How can compliance with the solubility limits of the elements other than lead be inferred from content measurements, irrespective of the shape or other physical characteristics of the material as a component part of a toy?

[7] *http://www.cpsc.gov/PageFiles/126588/componenttestingpolicy.pdf.*

• Which materials would present the greatest cost reduction if the Commission determined that third party testing is not required, especially considering that compliance with the underlying standard(s) would still be required?

• What other information staff should consider before potentially making recommendations to the Commission regarding a determination of compliance with the limitations on the eight elements listed in the Toy Standard?

IV. What topics will not be discussed in the workshop?

This staff workshop will focus exclusively on potential ways to reduce third party testing costs through determinations consistent with assuring compliance as described in this announcement. Other matters, such as certification issues, test methods, statutory content limits, or definitions will not be discussed at this workshop, nor are comments on these other topics appropriate in response to this announcement. Staff will not make recommendations for determinations at the workshop. The purpose of the workshop is to collect specific and potentially actionable information and evidence to be considered by staff for any potential future determinations.

V. Details Regarding the Workshop

A. When and where will the workshop be held?

CPSC staff will hold the workshop from 9 a.m. to 4 p.m. on April 3, 2014, at the CPSC's National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850. The workshop will also be available through a webcast, but viewers will not be able to interact with the panels and presenters.

B. How do you register for the workshop?

If you would like to make a presentation at the workshop or be considered as a panel member for a specific topic or topics, you should register by March 13, 2014. (*See* the **ADDRESSES** portion of this document for the Web site link and instructions on where to register.) We also ask that you indicate whether you would like to serve on a panel or make a presentation, and indicate each topic for which you wish to be considered. We ask that you limit the number of topics to no more than three. We will select panelists and individuals who will make presentations at the workshop, based on considerations such as the individual's demonstrated familiarity or expertise with the topic to be discussed, the practical utility of the information to be presented (such as a discussion of specific methods), and the individual's viewpoint or ability to represent certain interests (such as large manufacturers, small manufacturers, consumer organizations). We would like the presentations to represent and address a wide variety of interests.

Although we will make an effort to accommodate all persons who wish to make a presentation, the time allotted for presentations will depend on the number of persons who wish to speak on a given topic and the agenda. We recommend that individuals and organizations with common interests consolidate or coordinate their presentations and request time for a joint presentation. If you wish to make a presentation and want to make copies of your presentation or other handouts available, you should bring copies to the workshop. We will notify those who are selected to make a presentation or participate in a panel at least two weeks before the workshop. Please inform Ms. Jacqueline Campbell, *jcampbell@cpsc.gov,* 301–987–2024, if you need any special equipment to make a presentation.

If you would like to attend the workshop but do not wish to make a presentation or participate on a panel, we ask that you register by March 27, 2014. Please be aware that seating will be on a first-come, first-served basis.

If you need special accommodations because of disability, please contact Ms. Jacqueline Campbell, *jcampbell@cpsc.gov,* 301–987–2024, at least 10 days before the workshop.

In addition, we encourage written or electronic comments. Written or electronic comments will be accepted until April 17, 2014. Please note that all comments should be restricted to the topics covered by the workshop as described in this Announcement.

C. What happens if no one registers for the workshop?

If no one registers for the workshop, we will cancel the workshop. If we decide to cancel the workshop, we will post a cancellation notice by March 28, 2014, on the registration Web page for the workshop *http://www.cpsc.gov/meetingsignup* and send an email to all registered participants who provide their email address when they register.

Dated: February 24, 2014.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2014–04265 Filed 2–26–14; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0023]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records, entitled ''Interoperability Layer Service (IoLS)'', to its inventory of record systems subject to the Privacy Act of 1974, as amended. The system will evaluate individuals' eligibility for access to DoD facilities or installations and implement security standards controlling entry to DoD facilities and installations.

DATES: Comments will be accepted on or before March 31, 2014. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

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

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION**

CONTACT. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 4, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 21, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 16 DoD

SYSTEM NAME:

Interoperability Layer Service (IoLS).

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual seeking access to a DoD facility or installation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on individuals identified in the IoLS DoD Population Database: DoD ID number, Social Security Number (SSN), last name, date of birth, credential type, issuance, and expiration information; and security alert information (alert type, alert source, case number).

Information on individuals identified in the IoLS Local Population Database: Full name; date of birth; SSN; Local Population identifier; foreign national ID; gender; race; citizenship information; contact information (e.g., home or work mailing address, personal phone, work phone); physical features (height, weight, eye color, hair color); biometrics (photograph and fingerprints); credential type, issuance, and expiration information; security alert information (alert type, alert source, case number); and secondary identification such as a driver's license or passport.

The following will be included for individuals about whom records are maintained in the FBI National Crime Information Center (NCIC) Wanted Person File: identity information (to include alternate identity information): SSN; full name; gender; race; ethnicity; address; place of birth; date of birth; citizenship; physical features (height, weight, eye color, hair color or other identifying characteristics); vehicle/vessel license information; want/warrant type, time, location, and case number of offense, violation or incident; extradition limitations; incarceration information; employment information; vehicle, vessel, aircraft and/or train information; caution and medical condition indicators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; DoD Directive 1000.25, DoD Personnel Identity Protection (PIP) Program; DoD Instruction 5200.08, Security of DoD Installations and Resources and the DoD Physical Security Review Board (PSRB); DoD 5200.08–R, Physical Security Program; Directive-Type Memorandum (DTM) 09–012, Interim Policy Guidance for DoD Physical Access Control; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To evaluate individuals' eligibility for access to DoD facilities or installations and implement security standards controlling entry to DoD facilities and installations. This process includes vetting to determine the fitness of an individual requesting or requiring access, issuance of local access credentials for members of the public requesting access to DoD facilities and installations, and managing and providing updated security and credential information on these individuals. To ensure that identity and law enforcement information is considered when determining whether to grant physical access to DoD facilities and installations.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the FBI for the purpose of determining if records about individuals seeking access to DoD facilities and installations are maintained in the NCIC's Wanted Person File.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system.

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

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records may be retrieved by DoD ID Number, Local Population identifier, SSN, or credential information.

SAFEGUARDS:

Access to these records is role-based and is limited to those individuals requiring access in the performance of their official duties. Audit logs will be maintained to document access to data. All data transfers and information retrievals using remote communication facilities are encrypted. Records are maintained in encrypted databases in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. All individuals granted access to this system of records are to receive Information Assurance and Privacy Act training annually.

RETENTION AND DISPOSAL:

Disposition Pending (until the National Archives and Records Administration approves a retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Identity, Defense Manpower Data Center, 4800 Mark Center Drive, Alexandria, VA 22350–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should send written inquiries to the Deputy for Identity, Defense Manpower Data Center, 4800 Mark Center Drive, Alexandria, VA 22350.

Requests must contain the full name and Social Security Number of the subject, and a return address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Privacy Office, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests must include the full name and Social Security Number of the subject and a return address.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense/Joint Staff rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained

from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Information provided by the NCIC Wanted Person Files is exempt from the amendment and appeal provisions described in 5 U.S.C. 552a(f).

RECORD SOURCE CATEGORIES:

Defense Enrollment and Eligibility Reporting System (DEERS), FBI NCIC Wanted Person File, DoD Physical Access Control Systems, DoD Visitor Registration Centers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The records contained in this system are used for criminal, civil, and administrative enforcement requirements. To the extent that copies of exempt records may become part of these records through JUSTICE/FBI–001, National Crime Information Center (NCIC), OSD hereby claims the same exemptions for the records as claimed at their source (JUSTICE/FBI–001, National Crime Information Center (NCIC)). This system of records may be exempt from the following provisions of 5 U.S.C. 552a sections (c)(3) and (4), (d), (e)(1) through (3), (e)(4)(G) through (I), (e)(5) and (8), (f), and (g) (as applicable) of the Act.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2014–04246 Filed 2–26–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The Army Education Advisory Committee will meet from 8:00 a.m. to 5:00 p.m. on April 3, 2014 and from 8:00 a.m. to 4:00 p.m. on April 4, 2014.

ADDRESSES: Army Education Advisory Committee, U.S. Army Training and Doctrine Command, 950 Jefferson Ave, Fort Eustis, VA 23604.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Joyner, the Designated Federal Officer for the committee, in writing at ATTN: ATTG–ZC, U.S. Army Training and Doctrine Command, 950 Jefferson Ave, Fort Eustis, VA 23604, by email at *albert.w.joyner.civ@mail.mil,* or by telephone at (757) 501–5810.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b, as amended), and 41 CFR § 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to collect and analyze corporate and academia best practices for dealing with sexual harassment and assault.

Proposed Agenda: The committee is chartered to provide independent advice and recommendations to the Secretary of the Army on the educational, doctrinal, and research policies and activities of U.S. Army educational programs. At this meeting the committee will review and evaluate information related to dealing with sexual harassment and assault, and explore cultural issues affecting sexual harassment and assault. The committee will discuss societal norms, generational differences, changes in cultural dynamics, and sexual attitudes that may impact the Army's culture.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR § 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their, name, affiliation, and daytime phone number seven business days prior to the meeting to Mr. Joyner, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public attending the committee meetings will not be permitted to present questions from the floor or speak to any issue under consideration by the committee. Because the meeting of the committee will be held in a Federal Government facility on a military post, security screening is required. A photo ID is required to enter post. Please note that security and gate guards have the right to inspect vehicles and persons seeing to enter and exit the installation. U.S. Army Training and Doctrine Command is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Mr. Joyner, the committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR § 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mr. Joyner, the committee Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Official at least seven business days prior to the meeting to be considered by the committee. The Designated Federal Official will review all timely submitted written comments or statements with the committee Chairperson, and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date may not be provided to the committee until its next meeting.

The committee Designated Federal Official and Chairperson may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the committee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–04288 Filed 2–26–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0158]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Direct Consolidation Loan Program Application Documents

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 31, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0158 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will only accept comments during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jon Utz, 202–377–4040.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Direct Consolidation Loan Program Application Documents

OMB Control Number: 1845–0053

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private sector, individuals or households

Total Estimated Number of Annual Responses: 2,430,000

Total Estimated Number of Annual Burden Hours: 575,100

Abstract: This collection of information includes the following documents: (1) Federal Direct Consolidation Loan Application and Promissory Note (Application and Promissory Note); (2) Instructions for Completing the Federal Direct Consolidation Loan Application and Promissory Note (Instructions); (3)Additional Loan Listing Sheet; (4) Request to Add Loans; and (5) Loan Verification Certificate (LVC).

The Application and Promissory Note serves as the means by which a borrower applies for a Federal Direct Consolidation Loan and promises to repay the loan. The Instructions explain to the borrower how to complete the Application and Promissory Note. The Additional Loan Listing Sheet provides additional space for a borrower to list loans that he or she wishes to consolidate, if there is insufficient space on the Application and Promissory Note. The Request to Add Loans serves as the means by which a borrower may add other loans to an existing Federal Direct Consolidation Loan within a specified time period. The LVC serves as the means by which the U.S. Department of Education obtains the information needed to pay off the holders of the loans that the borrower wants to consolidate.

This revision updates the forms to reflect certain statutory and regulatory changes revises language for greater clarity and for greater consistency with other Direct Loan Program promissory notes.

Dated: February 24, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–04255 Filed 2–26–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14537–001]

Antrim Treatment Trust; Notice of Application Accepted for Filing With the Commission, Intent To Waive Scoping, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing an Expedited Schedule for Processing

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14537–001.

c. *Date filed:* December 12, 2013.

d. *Applicant:* Antrim Treatment Trust.

e. *Name of Project:* Antrim Micro-Hydropower Project.

f. *Location:* The project would utilize diverted water from an existing pond that collects acidic mine discharge from abandoned mines located in Duncan Township, Tioga County, Pennsylvania. The project would be located on lands owned by the applicant and would not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Margaret H. Dunn, Biomost, Inc., 434 Spring Street Ext., Mars, PA 16046. Phone: (724) 776–0161.

i. *FERC Contact:* Monir Chowdhury, (202) 502–6736 or *monir.chowdhury@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659

(TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14537–001.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The Antrim Micro-Hydropower Project would consist of the following existing features: (1) A 0.25-acre-foot collection pond; (2) a 12-inch-diameter, 435-foot-long polyvinyl chloride (PVC) pipe that conveys raw water from a collection pond to a 60-foot-diameter concrete clarifier with a capacity of 33,500 cubic feet in a treatment plant,[1] (3) a 12-inch-diameter, 143-foot-long high-density polyethylene (HDPE) pipe to convey treated water from the treatment plant to a forebay; (4) a 12-inch-diameter, 155-foot-long HDPE pipe connected to the 12-inch-diameter PVC pipe to bypass raw water to the forebay during high flow conditions or plant maintenance; (5) a forebay with a net storage capacity of 6,000 cubic feet; (6) an 18-inch-diameter, 972-foot-long penstock from the forebay to the powerhouse; (7) a powerhouse with two identical impulse turbine-generator units with a combined rated capacity of 40 kilowatts; (8) a 75-foot-long tailrace to convey flows from the powerhouse to an unnamed tributary to Bridge Run; (9) a 1,300-foot-long, 460-volt buried transmission line; and (10) appurtenant facilities. The project is estimated to generate an average of 250 megawatt-hours annually.

The applicant currently operates one turbine as an off-grid project, and proposes to bring the other turbine (currently in place but non-operational) online by additional indoor wiring within the existing powerhouse and the treatment plant, and operate both turbines as a grid-connected project.

m. Due to the project works already existing and the limited scope of new work described above, the applicant's close coordination with federal and state agencies during the preparation of the application, and agency comments, we intend to waive scoping and expedite the licensing process. Based on a review of the application, resource agency consultation letters, and agency comments, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project construction and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. *Procedural schedule:* The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

MILESTONE: Notice of the availability of the EA.

TARGET DATE: August 2014.

Dated: February 20, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–04276 Filed 2–26–14; 8:45 am]

BILLING CODE 6717–01–P

[1] There are various other facilities in the treatment plant, but they are not necessary for the hydropower purposes.

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: EC14–58–000.
Applicants: Florida Power & Light Company.
Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action of Florida Power & Light Company.
Filed Date: 2/18/14.
Accession Number: 20140218–5277.
Comments Due: 5 p.m. ET 3/11/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2290–002; ER10–2187–001.
Applicants: Avista Corporation, Spokane Energy, LLC.
Description: Second Amendment to July 1, 2013 Triennial Market Power Update for the Northwest Region of the Avista Corporation, et al.
Filed Date: 2/6/14.
Accession Number: 20140206–5148.
Comments Due: 5 p.m. ET 2/27/14.

Docket Numbers: ER11–1858–002; *ER11–1859–001.*
Applicants: NorthWestern Corporation, Montana Generation, LLC.
Description: NorthWestern Corporation submits an update to the market power analysis that was submitted on July 1, 2013.
Filed Date: 2/10/14.
Accession Number: 20140211–0013.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER12–1813–003.
Applicants: The Empire District Electric Company.
Description: Amendment to Compliance Filing to be effective 1/1/2013.
Filed Date: 2/12/14.
Accession Number: 20140212–5104.
Comments Due: 5 p.m. ET 3/5/14.

Docket Numbers: ER14–124–001.
Applicants: Entergy Arkansas, Inc.
Description: EAI Compliance ER14–124 2–19–2014 to be effective 12/19/2013.
Filed Date: 2/19/14.
Accession Number: 20140219–5020.
Comments Due: 5 p.m. ET 3/12/14.

Docket Numbers: ER14–129–001.
Applicants: Entergy Gulf States Louisiana, L.L.C.
Description: EGSL Compliance ER14–129 2–19–2014 to be effective 12/19/2013.
Filed Date: 2/19/14.
Accession Number: 20140219–5066.
Comments Due: 5 p.m. ET 3/12/14.

Docket Numbers: ER14–456–001.
Applicants: PJM Interconnection, L.L.C.
Description: Deficiency Filing per 1/17/2014 Order in Docket No. ER14–456. to be effective 1/22/2014.
Filed Date: 2/18/14.
Accession Number: 20140218–5247.
Comments Due: 5 p.m. ET 3/11/14.

Docket Numbers: ER14–865–001.
Applicants: Southwestern Public Service Company.
Description: 2–19–14_MBR Tariff—Rv Filing to be effective 3/1/2014.
Filed Date: 2/19/14.
Accession Number: 20140219–5154.
Comments Due: 5 p.m. ET 2/26/14.

Docket Numbers: ER14–1333–000.
Applicants: Virginia Electric and Power Company.
Description: Rate Schedule No. 102—NCEMPA to be effective 2/19/2014.
Filed Date: 2/18/14.
Accession Number: 20140218–5201.
Comments Due: 5 p.m. ET 3/11/14.

Docket Numbers: ER14–1334–000.
Applicants: Avista Corporation.
Description: Avista Corp FERC Electric Tariff Vol No 11 Revisions to be effective 4/17/2014.
Filed Date: 2/18/14.
Accession Number: 20140218–5244.
Comments Due: 5 p.m. ET 3/11/14.

Docket Numbers: ER14–1336–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Resource Termination of D.C.AM Commonwealth of MA.
Filed Date: 2/19/14.
Accession Number: 20140219–5028.
Comments Due: 5 p.m. ET 3/12/14.

Docket Numbers: ER14–1337–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Resource Termination of Hess Energy Marketing, LLC.
Filed Date: 2/19/14.
Accession Number: 20140219–5030.
Comments Due: 5 p.m. ET 3/12/14.

Docket Numbers: ER14–1338–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Resource Termination of Next Era Power Marketing.
Filed Date: 2/19/14.
Accession Number: 20140219–5031.
Comments Due: 5 p.m. ET 3/12/14.

Docket Numbers: ER14–1339–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Resource Termination of Constellation New Energy, Inc.
Filed Date: 2/19/14.
Accession Number: 20140219–5033.
Comments Due: 5 p.m. ET 3/12/14.

Docket Numbers: ER14–1340–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–02–19_SA 2527 ITC-Consumers Amended GIA (J161) to be effective 2/20/2014.
Filed Date: 2/19/14.
Accession Number: 20140219–5137.
Comments Due: 5 p.m. ET 3/12/14.

Docket Numbers: ER14–1341–000.
Applicants: Solea Energy, LLC.
Description: Initial MBR Tariff Filing to be effective 3/1/2014.
Filed Date: 2/19/14.
Accession Number: 20140219–5153.
Comments Due: 5 p.m. ET 3/12/14.

Docket Numbers: ER14–1342–000.
Applicants: Midway Peaking, LLC.
Description: Notice of Succession to be effective 2/20/2014.
Filed Date: 2/19/14.
Accession Number: 20140219–5159.
Comments Due: 5 p.m. ET 3/12/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 19, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–04233 Filed 2–26–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

	Docket Nos.
Lakeland Solar Energy LLC	EG14–13–000
New AERG, LLC	EG14–14–000
Ameren Energy Generating Company	EG14–15–000

	Docket Nos.
Société de cogénération de St-Félicien, Société en commandite	FC14–10–000

Take notice that during the month of January 2014, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: February 20, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–04280 Filed 2–26–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX11–1–001]

Southern Cross Transmission LLC, Pattern Power Marketing LLC; Notice of Filing

Take notice that on February 20, 2014, Southern Cross Transmission LLC (SCT) and Pattern Power Marketing LLC (PPM) filed the final, unexecuted interconnection agreements between (1) Oncor Electric Delivery Company LLC and Garland Power & Light Company (Garland) and (2) Garland and SCT, in compliance with Ordering Paragraph of the Federal Energy Regulatory Commission's (Commission) December 15, 2011 *Proposed Order Directing Interconnection and Transmission Service and Conditionally Approving Settlement Agreement.*[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on March 24, 2014.

Dated: February 20, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–04281 Filed 2–26–14; 8:45 am]

BILLING CODE 6717–01–P

[1] *Southern Cross Transmission LLC, et al.,* 137 FERC ¶ 61, 206 (2011).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD14–7–000]

Third-Party Provision of Reactive Supply and Voltage Control and Regulation and Frequency Response Services; Notice of Workshop

Take notice that Federal Energy Regulatory Commission (Commission) staff will convene a workshop to obtain input on third-party provision of reactive supply and voltage control and regulation and frequency response services. The workshop will be held on April 22, 2014 in the Commission Meeting Room at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Members of the Commission may attend.

Advance registration is not required, but is encouraged. You may register at the following Web page: *https://www.ferc.gov/whats-new/registration/04-22-14-form.asp.*

Those wishing to participate in the program for this event should nominate themselves through the on-line registration form no later than March 14, 2014 at the following Web page: *https://www.ferc.gov/whats-new/registration/04-22-14-speaker-form.asp.*

The Commission will issue a subsequent notice providing the detailed agenda for the workshop.

In Order No. 784, the Commission revised its regulations to foster competition and transparency in ancillary services markets.[1] Among other things, the Commission revised Part 35 of its regulations to reflect reforms to its *Avista*[2] policy governing the sale of ancillary services at market-based rates to public utility transmission providers. The Commission implemented these reforms out of a concern that the *Avista* restriction limiting the sale of ancillary services at market-based rates absent a showing of lack of market power to a public utility transmission provider for purposes of satisfying its open access transmission (OATT) requirements was proving to be an unreasonable barrier to entry, unnecessarily restricting access to potential suppliers.[3] Based on the record developed in that proceeding, the Commission relaxed the *Avista* restrictions with respect to the sale of Energy Imbalance, Generator Imbalance, Operating Reserve-Spinning and Operating Reserve-Supplemental services.

However, the Commission found that the technical and geographic requirements associated with Reactive Supply and Voltage Control (Schedule 2) and Regulation and Frequency Response (Schedule 3) services precluded application of the existing market power screens to the sale of those services. Instead, the Commission provided other options for such sales (price cap and competitive solicitation, described further below) and stated its intention to gather more information regarding the technical, economic and market issues concerning the provision of these services in a new, separate proceeding. The Commission stated that such proceeding will consider, among other things, the ease and cost-effectiveness of relevant equipment upgrades, the need for and availability of appropriate special arrangements such as dynamic scheduling or pseudo-tie arrangements, and other technical requirements related to the provision of Schedule 2 and Schedule 3 services.

Consistent with the Commission's stated intent in Order No. 784, staff would like to receive input from interested persons regarding the technical, economic and market issues concerning the provision of Schedule 2

[1] *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies,* Order No. 784, 78 FR 46,178 (July 30, 2013), FERC Stats. & Regs. ¶ 31,349, at PP 2–3 (2013).

[2] *Avista Corp.,* 87 FERC ¶ 61,223, *order on reh'g,* 89 FERC ¶ 61,136 (1999) (*Avista*).

[3] *See* Order No. 784, FERC Stats. & Regs. ¶ 31,349 at P 9.

and Schedule 3 services. To facilitate this discussion, staff provides additional background regarding Commission policies and recent actions with respect to reactive power, frequency response, and frequency regulation.

Reactive Power

Reactive power is a critical component of operating an alternating current (AC) electricity system, and is required to control system voltage within appropriate ranges for efficient and reliable operation of the transmission system. At times generators or other resources must either supply or consume reactive power for the transmission system to maintain voltage levels required to reliably supply electricity from generation to load.

Payments for reactive power capability vary by region. Some regions do not pay for reactive power capability within the required power factor range, finding that it is a requirement of generator operation under good utility practice. Other regions pay generators a cost-based rate for reactive power capability, since generators incur costs to provide that capability and paying generators aligns incentives with desired behavior for system flexibility. Where such cost-based rates are paid, providers of reactive power generally are authorized to receive payment pursuant to tariffs on file with the Commission. The *Avista* policy permitting some ancillary service sales without a showing of lack of market power, did not apply to Schedule 2 service.[4] Accordingly, suppliers wishing to sell Schedule 2 service at market-based rates have always needed to demonstrate a lack of market power with respect to the reactive power product before such sales would be authorized.

In Order No. 784, the Commission nevertheless evaluated whether the existing market power screens could be applied to the sale of Schedule 2 service without significant modification.[5] The Commission found that the more stringent technical and geographic considerations associated with Schedule 2 service suggest that it is not the simple combination of basic energy and capacity products. The Commission noted that most comments addressing the sale of Schedule 2 service agree that the set of resources considered by the existing market power screens for energy and capacity would differ too significantly from the set of resources that would be considered by market power analyses designed specifically for Schedule 2 service. The Commission therefore concluded that the record before it did not support application of the existing market power screens without significant modification to Schedule 2 service. Instead, the Commission allowed market-based sales of Schedule 2 service to a public utility that is purchasing ancillary services to satisfy its OATT requirements if the sale is made pursuant to a competitive solicitation that meets certain specified requirements,[6] or when such sale is made at or below the buying public utility transmission provider's own Schedule 2 rate.[7]

At the workshop, staff would like to discuss the following:

- The extent to which reactive power can be traded across balancing areas in a manner consistent with existing market power screens for energy and capacity;
- Whether there should be payment for reactive power capability within the required power factor range;
- How cost-based payments for reactive power capability should be structured; and
- What are the obligations of generators receiving payment for reactive power capability?

Frequency Response and Frequency Regulation

In Order No. 784, the Commission also evaluated whether the existing market power screens for sales of energy and capacity could be applied to the sale of Schedule 3 service without significant modification.[8] The Commission discussed Schedule 3 as a single service in Order No. 784, focusing primarily on AGC-based frequency regulation. However, frequency response is distinct from frequency regulation.[9] Frequency response involves the autonomous, automatic, and rapid reaction of an individual turbine-generator or other resource to change its output to rapidly dampen large changes in frequency, generally through appropriate governor settings. Frequency regulation is produced from either manual or automated dispatch (through Automatic Generation Control (AGC)) from a centralized system.[10] In Order No. 888, the Commission found that governor-based autonomous frequency response did not merit a separate ancillary service because at the time the same resources that respond to regulation signals also provided governor response under then-standard industry practices.[11] As a result, the language of Order No. 888 discussing Schedule 3 was focused primarily on AGC-based central dispatch.[12]

While it remains true that most generating units capable of providing frequency regulation are also capable of providing frequency response, standard industry practices have changed and it is no longer clear that most resources providing frequency regulation are also providing frequency response. Accordingly, staff is evaluating whether additional market mechanisms are needed to facilitate the provision of either frequency response or frequency regulation in the organized or bilateral markets. For purposes of considering the technical, economic and market issues concerning the provision of Schedule 3 service, staff believes it would be productive to focus on frequency response and frequency regulation separately.

Frequency Regulation

Frequency regulation is used to balance generation, interchange and demand by managing the response of available resources within minutes.[13] Frequency regulation is provided under different market mechanisms in the organized and bilateral markets. Regional transmission operators (RTOs) and independent system operators (ISOs) generally procure frequency regulation through auction-based market mechanisms in which payments are intended to cover the range of costs

[4] *See id.* n.17.

[5] *Id.* PP 59–61.

[6] *Id.* P 99.

[7] *Id.* PP 82–85.

[8] *Id.* PP 59–61.

[9] As used herein, frequency response refers to primary frequency response and frequency regulation refers to secondary frequency response.

[10] *See Frequency Response and Frequency Bias Setting Reliability Standard,* Order No. 794, 146 FERC ¶ 61,024 at PP 8–9 (2014).

[11] ''While the services provided by Regulation Service and Frequency Response Service are different, they are complimentary services that are made available using the same equipment.'' *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036, slip at 212 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[12] ''Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generation control equipment). . .'' *See* OATT Schedule 3.

[13] Order No. 794, 146 FERC ¶ 61,024 at P 9. The level of frequency regulation required for each balancing authority area is not fixed, but is set by each balancing authority area to meet the requirements of NERC Reliability Standards.

incurred to provide service.[14] Resources wishing to sell frequency regulation in RTO/ISO markets are authorized to do so pursuant to their MBR tariffs.

Outside the RTO/ISO markets, *Avista* authorizes suppliers who cannot show a lack of market power with respect to Schedule 3 service to nevertheless sell that service with certain restrictions.[15] One such restriction is that the authorization provided by *Avista* does not apply to sales to a public utility that is purchasing ancillary services to satisfy its own OATT requirements to offer ancillary services to its own customers.[16] In Order No. 784, the Commission evaluated whether the existing market power screens could be applied with respect to the sale of Schedule 3 service without significant modification, as a way to permit such sellers to avoid the otherwise applicable *Avista* restriction.

As in Order No. 888, the Commission's evaluation of this issue in Order No. 784 focused primarily on frequency regulation, not frequency response.[17] The Commission concluded that the existing market power screens for energy and capacity were inadequate for analyzing Schedule 3 service because there are significant technical requirements, such as the need for AGC equipment, that limit the set of resources capable of supplying Schedule 3 service. The Commission agreed in principle with commenters that potential competitors could be viewed as existing competitors for purposes of market power analysis if it is known that they can install needed equipment rapidly and profitably in response to appropriate price signals, but found that the record does not conclusively support the notion that such equipment upgrades (e.g., to install AGC equipment in an existing generator) can be accomplished in such a manner. The Commission also noted that the record indicates that third-party sellers of Schedule 3 service might need to enter into or facilitate special transmission service arrangements between neighboring balancing authorities, such as dynamic scheduling or pseudo-tie arrangements, in order to make sales outside of their home balancing authority area. Because this fact could impact the appropriateness of using the default geographic market reflected in the existing market power screens for sales of energy and capacity, and thus the ability to apply those screens to sales of Schedule 3 service without significant modification, the Commission concluded that the record before it did not support application of the existing market power screens for sales of energy and capacity to sales of Schedule 3 service. Instead, the Commission allowed market-based sales of Schedule 3 service to a public utility that is purchasing ancillary services to satisfy its OATT requirements if the sale is made pursuant to a competitive solicitation that meets certain specified requirements,[18] or when such sale is made at or below the buying public utility transmission provider's own Schedule 3 rate.[19]

At the workshop, staff would like to discuss the technical, economic and market issues concerning the provision of Schedule 3 service as it relates to frequency regulation outside of the RTO regions, including:

- To what extent do existing resources lack the necessary AGC equipment to provide frequency regulation?
- Why do existing resources that have AGC equipment choose not to use it?
- What is the ease and expense of adding AGC equipment to an existing resource?
- Are any special transmission scheduling provisions needed to enable the provision of frequency regulation from one balancing authority area to another? If so, what is the ease and expense of implementing them?
- Are there efforts underway to make the provision of frequency regulation easier?

Frequency Response

Sufficient frequency response is necessary to stabilize frequency within an interconnection immediately following the sudden loss of generation or load. The ability of a power system to withstand a sudden loss of generation or load depends on the presence and adequacy of resources capable of providing rapid incremental power changes to counterbalance the disturbance and arrest a frequency deviation. Most frequency response is provided by the automatic and autonomous actions of turbine-generators that have appropriate governor settings, with some response being provided by load resources that have capabilities similar to autonomous governor response.[20]

On January 16, 2014 the Commission issued Order No. 794, Frequency Response and Frequency Bias Setting Reliability Standard. The now-approved NERC Reliability Standard BAL–003–1 establishes a minimum Frequency Response Obligation for each balancing authority areas or frequency response sharing group; provides a uniform calculation of frequency response measure; establishes Frequency Bias Settings that set values closer to actual balancing authority frequency response; and encourages coordinated AGC operation.[21] By imposing a requirement on balancing authority areas and frequency response sharing groups to provide frequency response, Order No. 794 will have the effect of transitioning frequency response from what was historically considered an interconnection-wide system characteristic to a distinct balancing service that specific entities must deliver. Recognizing this, the Commission issued a separate docket in July 2013 to explore the market implications of the new frequency response and frequency bias setting requirements, including potential impacts of the frequency bias setting being different from actual frequency response; potential market and commercial impacts of not accounting for transmission limitations and historical flows when calculating frequency response obligations; crediting load resources as part of the frequency response obligation; the potential need for compensating frequency response resources; and any other potential impacts on transmission capacity or ancillary services.[22]

Although a public utility transmission provider using its own resources to provide Schedule 3 service would likely recover most of its costs of providing governor-based frequency response along with its costs for AGC-based frequency regulation under OATT Schedule 3, to the extent the same units are providing both services, there are few market mechanisms in place regarding compensation for frequency response as a stand-alone service. Unlike frequency regulation, frequency response has not been defined as a

[14] *Frequency Regulation Compensation in the Organized Wholesale Power Markets,* Order No. 755, FERC Stats. & Regs. ¶ 32,324, at PP 6–11 (2011), *reh'g denied,* Order No. 755–A, 138 FERC ¶ 61,123 (2012).

[15] Additionally, any seller who can successfully demonstrate a lack of market power with respect to Schedule 3 service would receive authorization from the Commission to sell to any entity without restrictions, including public utility transmission providers.

[16] *See Avista,* 87 FERC ¶ 61,223 at n.12.

[17] Order No. 784, FERC Stats. & Regs. ¶ 31,349 at PP 59–61.

[18] *Id.* P 99.

[19] *Id.* PP 82–85.

[20] Order No. 794, 146 FERC ¶ 61,024 at P 6. Once it becomes effective, NERC Reliability Standard BAL–003–1 will establish a minimum frequency response obligation for each balancing authority area.

[21] *Id.* P 1.

[22] *Market Implications of Frequency, Response and Frequency Bias Setting Requirements,* Notice of Request for Comments, 144 FERC ¶ 61,058 (2013).

product in the RTO/ISO markets. And while the authorization provided in *Avista* would apply to frequency response, the restriction on sales to a public utility that is purchasing ancillary services to satisfy its own OATT requirements to offer ancillary services to its own customers effectively precludes development of a market for frequency response. These concerns along with the recently authorized reliability standard have created the need for Commission Staff to request input regarding existing regulatory and tariff provisions as well as potential market implications for frequency response service.

At the workshop, staff would like to discuss the technical, economic and market issues concerning the provision of Schedule 3 service as it relates to frequency response, including:

- To what extent should existing resources be required to provide their inherent quantity of frequency response as part of their existing obligations, with any shortfall in achieving the balancing authority area's frequency response obligation being procured through tariff or market mechanisms such as in ERCOT;
- Could competitive, market-based procurement of primary frequency response performance be structured to address potential market power concerns;
- Whether provision of autonomous governor response could be traded in a manner that is consistent with the existing market power screens for sales of energy and capacity;
- To what extent can existing resources be equipped with governors, or other control equipment that can serve the same function, and how expensive or time consuming would such a retrofit be;
- Since governor-based autonomous frequency response would not require any dispatch signal from a balancing area operator, would any special dispatch or transmission scheduling provisions be needed to provide the service from resources in a neighboring balancing authority area;
- Could competitive procurement of primary frequency response be structured to avoid increases in Transmission Reliability Margin, avoid barriers to non-conventional resources, and assure the performance will be consistent with the Commission-approved balancing authority area obligation, assure the generators providing primary frequency response achieve appropriate speed and magnitude of power output;
- How could cost-based payments for primary frequency response performance be structured;
- To what extent do existing resources lack the necessary equipment or fail to utilize the appropriate settings on that equipment to provide primary frequency response;
- Why do existing resources that have the necessary equipment to provide primary frequency response choose not to use it or to absorb response; and,
- Are penalties for deviating from generation schedules viewed as a serious impediment to the provision of frequency response?

The workshop will not be transcribed. However, there will be a free webcast of the workshop. Anyone with Internet access interested in viewing this workshop can do so by navigating to the FERC Calendar of Events at *www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the workshop via phone-bridge for a fee. If you have any questions, visit www.CapitolConnection.org or call (703) 996–3100.

FERC workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

FOR FURTHER INFORMATION CONTACT:

Sarah McKinley (Logistical Information), Federal Energy Regulatory Commission, Office of External Affairs, (202) 502–8368, *sarah.mckinley@ferc.gov*

Rahim Amerkhail (Technical Information), Federal Energy Regulatory Commission, Office of Energy Policy and Innovation, 888 First Street NE., Washington, DC 20426, (202) 502–8266, *Rahim.amerkhail@ferc.gov*.

Dated: February 20, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–04278 Filed 2–26–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–19–000]

Midcontinent Independent System Operator, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On February 20, 2014, the Commission issued an order in Docket No. EL14–19–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Midcontinent Independent System Operator Inc.'s (MISO) proposed Regional Through-and-out Rate for service over the transmission system in the MISO South region. *Midcontinent Indep. Sys. Operator, Inc.,* 146 FERC ¶ 61,111 (2014).

The refund effective date in Docket No. EL14–19–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: February 20, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–04234 Filed 2–26–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–77–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on February 10, 2014, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed in Docket No. CP14–77–000, a prior notice request pursuant to sections 157.205, 157.208 and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, requesting authorization to construct 5.5 miles of 24-inch diameter pipeline and appurtenances, extending Line R–701 north of McArthur Compressor Station, located in Vinton and Fairfield Counties, Ohio. Columbia states that the proposed extension of Line R–701 will not increase (or decrease) the line's capacity nor change any services currently offered by Columbia. Columbia asserts that the proposed project is required to increase the

reliability of both the existing Line R–701 and the overall R-System in the Ohio region. Columbia estimates the costs of the proposed project to be approximately $25.3 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Frederic J. George, Senior Counsel, Columbia Gas Transmission, LLC, P.O. Box 1273, Charleston, West Virginia 25325–1273, by telephone at (304) 357–2359 or by facsimile at (304) 357–3206.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: February 20, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–04279 Filed 2–26–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0133; FRL–9907–03–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Regulation of Fuels and Fuel Additives: 2011 Renewable Fuel Standards—Petition for International Aggregate Compliance Approach

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Regulation of Fuels and Fuel Additives: 2011 Renewable Fuel Standards—Petition for International Aggregate Compliance Approach'' (EPA ICR No. 2398.03, OMB Control No. 2060–0655) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a ''proposed extension of the ICR, which is currently approved through February 28, 2014. Public comments were previously requested via the **Federal Register** (78 FR 30428) on December 20, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 31, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2010–0133, to (1) EPA online using *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, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Fuel Compliance Center, 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9017 fax number: 202–565–2085 email address: *heard.geanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This regulation has a provision that EPA will use to authorize renewable fuel producers using certain foreign-grown feedstocks to use an aggregate approach to comply with the renewable biomass verification

provisions, akin to that applicable to producers using crops and crop residue grown in the United States. For this authorization, foreign based entities may petition EPA for approval of the aggregate compliance approach for specified renewable fuel feedstocks either in a foreign country as a whole or in a specified geographical area. This petition request for the aggregate compliance approach for foreign-grown crops and crop residue is voluntary, though, if approved by EPA, will offer the benefit that certain renewable biomass produced in a foreign country or geographical area can be counted as feedstock to make renewable fuel for credit under the Renewable Fuel Standard (RFS2) program.

Form Numbers: None

Respondents/affected entities: 15.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 15 (total).

Frequency of response: On occasion.

Total estimated burden: 600 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $ 68,400 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is an increase of hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The total hours increased by 400 due to a more accurate account of hours needed for foreign producers to complete the petition for approval that will offer the benefit that certain renewable biomass produced in a foreign country or geographical area can be counted as feedstock to make renewable fuel for credit under the Renewable Fuel Standard (RFS2). This change in burden hours increased the cost of this collection by $54,204 per year. The respondent universe and responses remained the same in this collection.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–04275 Filed 2–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0579; FRL–9906–98]

Draft Guidelines; Product Environmental Performance Standards and Ecolabels for Voluntary Use in Federal Procurement; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** issue of November 27, 2013, concerning public review and comment on draft guidelines with a potential approach for using non-governmental product environmental performance standards and ecolabels in Federal purchasing. This document reopens the comment period for two months, until April 25, 2014. The Agency received several requests to extend the comment period to allow more time for stakeholder review, collaboration, and response.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0579, must be received on or before April 25, 2014.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of November 27, 2013.

FOR FURTHER INFORMATION CONTACT: Alison Kinn Bennett, Pollution Prevention Division (7409M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8859; email address: *kinn.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: This document reopens the public comment period established in the **Federal Register** issue of November 27, 2013 (78 FR 70938) (FRL–9394–7). In that document, EPA announced for public review and comment draft guidelines intended to provide a transparent, fair, and consistent approach to using nongovernmental product environmental performance standards and ecolabels in Federal purchasing, consistent with Federal standards policy and sustainable acquisition mandates. These draft guidelines have been developed in response to requests via a wide variety of stakeholder engagement channels from suppliers, manufacturers, environmental organizations, Federal purchasers, and other stakeholders over the last several years. EPA is hereby reopening the comment period to April 25, 2014.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the November 27, 2013 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Ecolabels, Government procurement, Guidelines, Standards.

Dated: February 20, 2014.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2014–04329 Filed 2–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0025; FRL–9907–06]

Notice of Receipt of Pesticide Products; Registration Applications To Register New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This notice provides the public with an opportunity to comment on the applications.

DATES: Comments must be received on or before March 31, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EPA Registration Number or EPA File Symbol of interest as shown in the body of this document, by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Antimicrobials Division (AD) (7510P), email address:

ADFRNotices@epa.gov; or Lois Rossi, Registration Division (RD) (7505P), email address: *RDFRNotices@epa.gov;* main telephone number: (703) 305–7090, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under the Agency's public participation process for registration actions, there will be an additional opportunity for a 30-day public comment period on the proposed decision. Please see the Agency's public participation Web site for additional information on this process (*http://www.epa.gov/pesticides/regulating/registration-public-involvement.html*). EPA received the following applications to register new uses for pesticide products containing currently registered active ingredients:

1. *EPA Registration Numbers:* 100–1067 and 100–1431. *Docket ID number:* EPA–HQ–OPP–2013–0729. *Applicant:* Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Paraquat dichloride. *Product type:* Herbicide. *Proposed uses:* Arracacha; arrowroot; artichoke, Chinese; artichoke, Jerusalem; canna, edible; cassava, bitter and sweet; chayote (root); chufa; dasheen; ginger; leren; sweet potato; tanier; turmeric; yam, bean; and yam, true. (RD)

2. *EPA Registration Symbol/EPA Registration Number:* 264–RRAO and 264–1137. *Docket ID number:* EPA–HQ–OPP–2014–0013. *Applicant:* Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Fluoxastrobin. *Product type:* Fungicide. *Proposed uses:* For use as a seed treatment on corn to aid in the control of seed borne and soilborne fungi, *Penicillium* spp. and *Aspergillus* spp., causing seed and seedling blights; and to aid in suppression of late season stalk rot caused by *Fusarium spp.* and *Colletotrichum graminicola.* (RD)

3. *EPA Registration Numbers:* 264–776 and 264–1055. *Docket ID number:* EPA–HQ–OPP–2013–0504. *Applicant:* Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Trifloxystrobin. *Product type:* Fungicide. *Proposed uses:* Dry pea, chickpea, and lentil. (RD)

4. *EPA Registration Symbol:* 352–III. *Docket ID number:* EPA–HQ–OPP–2014–0007. *Applicant:* E.I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898. *Active ingredient:* Picoxystrobin. *Product type:* Herbicide. *Proposed use:* End-use product intended for treatment of canola, corn and soybean seeds. (RD)

5. *EPA Registration Symbols/EPA Registration Number:* 499–LTN, 499–LAO, and 7969–299. *Docket ID number:* EPA–HQ–OPP–2013–0793. *Applicant:* BASF Corporation, Whitmire Micro-Gen Research Laboratories, 3568 Tree Court Industrial Blvd., St. Louis, MO 63122–6682. *Active ingredient:* Alpha-Cypermethrin. *Product type:* Insecticide. *Proposed use:* Indoor non-food handling establishments. (RD)

6. *EPA Registration Numbers:* 7969–185, 7969–199, and 7969–258. *Docket ID number:* EPA–HQ–OPP–2013–0798. *Applicant:* BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park, NC 27709. *Active ingredient:* Pyraclostrobin. *Product type:* Fungicide. *Proposed uses:* Herbs, Subgroup 19A; Dill; Stone Fruit, Group 12–12 (conversion); and Tree Nut, Group 14–12 (conversion). (RD)

7. *EPA Registration Numbers:* 7969–198 and 7969–199. *Docket ID number:* EPA–HQ–OPP–2013–0797. *Applicant:* BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park, NC 27709. *Active ingredient:* Boscalid. *Product type:* Fungicide. *Proposed uses:* Herbs, Subgroup 19A; Dill; Stone Fruit, Group 12–12 (conversion); Tree Nut, Group 14–12 (conversion). (RD)

8. *EPA Registration Numbers:* 7969–283 and 7969–284. *Docket ID number:* EPA–HQ–OPP–2013–0255. *Applicant:* BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park, NC 27709. *Active ingredient:* Metrafenone. *Product type:* Fungicide. *Proposed uses:* Peach, Subgroup 12–12B; Apricot; Cherry, Subgroup 12–12A; Hop, dried cones; Vegetable, cucurbit, Group 9; and Fruit, small, vine climbing, except fuzzy kiwifruit, Subgroup 13–07F. (RD)

9. *EPA Registration Symbol:* 59441–RR. *Docket ID number:* EPA–HQ–OPP–2014–0017. *Applicant:* Eastman Kodak Company, 343 State St., Rochester, NY 14650. *Active ingredient:* Copper sulfate pentahydrate. *Product type:* Antimicrobial. *Proposed use:* Material preservative. (AD)

10. *EPA Registration Number:* 82552–1. *Docket ID number:* EPA–HQ–OPP–2013–0826. *Applicant:* Siamons International, Inc., 48 Galaxy Blvd., Unit 413, Toronto, Ontario, Canada M9W 6C8. *Active ingredient:* Sodium carbonate. *Product type:* Antimicrobial, Fungistat, and Mildewstat. *Proposed uses:* HVAC Systems. (AD)

11. *EPA Registration Number:* 84034–1. *Docket ID number:* EPA–HQ–OPP–2014–0016. *Applicant:* Mexel USA, LLC, 1655 North Fort Myer Drive, Suite 350, Arlington, VA 22209. *Active ingredient:* 1-(Alkyl amino)-3 aminopropane. *Product type:* Molluscicide/antifoulant. *Proposed use:* End-use product intended to control bio-fouling in once through and recirculating cooling towers. (AD)

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 12, 2014.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2014–04326 Filed 2–26–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9907–16–Region 9]

Yosemite Slough Superfund Site, San Francisco, CA; Notice of Proposed CERCLA Ability To Pay Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement with one ability to pay party for recovery of response costs concerning the Yosemite Slough Superfund Site in San Francisco, California. The settlement is entered into pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), and it requires the settling party to pay $50,000 to the United States Environmental Protection Agency (Agency). The settlement includes a covenant not to sue the settling party pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a). For thirty (30) days following the date of publication of this notice in the **Federal Register**, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Pursuant to Section 122(i) of CERCLA, EPA will receive written comments relating to this proposed settlement until March 31, 2014.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region IX, 75 Hawthorne Street, San Francisco, California. A copy of the proposed settlement may be obtained from Rachel Tennis, Attorney-Adviser (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3746. Comments should reference the Yosemite Slough Superfund Site, San Francisco, California and should be addressed to Rachel Tennis at the above address.

FOR FURTHER INFORMATION CONTACT: Rachel Tennis, Attorney-Adviser (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3746; fax: (417) 947–3570; email: *tennis.rachel@epa.gov.*

SUPPLEMENTARY INFORMATION: *Party to the Proposed Settlement:* Angelica Gnzalez.

Dated: February 6, 2014.

Enrique Manzanilla,

Director, Superfund Division, U. S. EPA, Region IX.

[FR Doc. 2014–04322 Filed 2–26–14; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2014–6004]

Agency Information Collection Activities; Proposals Submissions, and Approvals

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 95–09 Letter of Interest Application.

SUMMARY: The Export-Import Banks of the United States (Ex-Im Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Letter of Interest (LI) is an indication of Export-Import (Ex-Im) Bank's willingness to consider financing a given export transaction. Ex-Im Bank uses the requested information to determine the applicability of the proposed export transaction and determines whether or not to consider financing that transaction.

The form can be reviewed at: *http://www.exim.gov/pub/pending/95-9-li-1.pdf*

DATES: Comments must be received on or before April 28, 2014 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 95–09 Letter of Interest Application.

OMB Number: 3048–0005.

Type of Review: Regular.

Need and Use: The Letter of Interest (LI) is an indication of Export-Import (Ex-Im) Bank's willingness to consider financing a given export transaction. Ex-Im Bank uses the requested information to determine the applicability of the proposed export transaction system prompts and determines whether or not to consider financing that transaction.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 540.

Estimated Time per Respondent: 0.5 hours.

Annual Burden Hours: 270.

Frequency of Reporting of Use: On occasion.

Government Reviewing Time per Year: 270.

Average Wages per Hour: $42.50.

Average Cost per Year: $11,475.

Benefits and Overhead: 20%.

Total Government Cost: $13,770.

Bonita Jones-McNeil,

Records Management Analyst, Records Management Division.

[FR Doc. 2014–04293 Filed 2–26–14; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted to the Office of Management and Budget for Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 31, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0057.

Title: Application for Equipment Authorization, FCC Form 731.

Form Number: FCC 731.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 3,740 respondents; 22,250 responses.

Time per Response: 35 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r).

Total Annual Burden: 778,750 hours.

Total Annual Costs: $ 34,465,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Minimal exemption from the Freedom of Information Act (FOIA) under 5 U.S.C. 552(b)(4) and FCC rules under 47 CFR 0.457(d) is granted for trade secrets which may be submitted as attachments to the application FCC Form 731. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this expiring information collection (IC) to the OMB during this comment period. There is an increase in respondents/burden estimates in this information collection.

Commission rules require that manufacturers of certain radio frequency (RF) equipment file FCC Form 731 to obtain approval prior to marketing their equipment. Manufacturers may then market their RF equipment based on a showing of compliance with technical standards established in the FCC Rules for each type of equipment or device operated under the applicable FCC Rule part. The following types of equipment are regulated (a) the RF equipment is regulated under certain rule sections of 47 CFR Part 15 and Part 18, and (b) in addition, rules governing certain RF equipment operating in the licensed services also require equipment authorization as established in the procedural rules in 47 CFR Part 2. The RF equipment manufacturers comply with the information collection requirements by (a) Filing FCC Form 731 electronically with the Commission, or (b) Submitting the information to a Telecommunications Certification Body (TCB), which acts on behalf of the FCC to issue grants of certification and may issue grants more expeditiously than the FCC. The TCBs have flexibility in the format in which they require the collection of information (i) TCBs may require applicants to submit the required information in FCC Form 731 format or in another format selected by the TCB, but (ii) whatever the information collection method, the information required is governed by the procedural rules in 47 CFR Part 2 and a showing of compliance with the FCC technical standards for the specific type of equipment. RF manufacturer applicants for equipment certification may also request ''expedited authorization'' to market their equipment by: (a) Choosing to pay the fee levied by a TCB, and (b) submitting their request to a TCB in order for expedited authorization to market. The TCB processes the RF equipment manufacturer's application as follows: (i) The TCB receives and reviews the RF manufacturer's information submission/application; and (ii) the TCB enters the information into the FCC Equipment Authorization System database using an interface that provides the TCB with the tools to issue a standardized Grant of Equipment Authorization. Whichever method the RF manufacturers choose to submit their information—via either the FCC on FCC Form 731 or the TCB, FCC Rules require that applicants supply the following data: (a) Demographic information including Grantee name and address, contact information, etc.; (b) information specific to the equipment including FCC Identifier, equipment class, technical specifications, etc.; and (c) attachments that demonstrate compliance with FCC Rules that may include any combination of the following based on the applicable Rule parts for the equipment for which authorization is requested: (1) Identification of equipment (47 CFR 2.925); (2) attestation statements that may be required for specific equipments; (3) external photos of the equipment for which authorization is requested; (4) block diagram of the device; (5) schematics; (6) test report; (7) test setup photos; (8) Users Manual; (9) Internal Photos; (10) Parts List/Tune Up Information; (11) RF Exposure Information; (12) Operational Description; (13) Cover Letters; and, (14) Software Defined Radio/Cognitive Radio Files.

In general, an applicant's submission is as follows: (a) FCC Form 731 includes approximately two pages covering the demographic and equipment identification information; and (b)

applicants must supply additional documentation and other information, as described above, demonstrating conformance with FCC Rules, which may range from 100–1,000 pages. The supplemental information is essential to control potential interference to radio communications, which the FCC may use, as is necessary, to investigate complaints of harmful interference. In response to new technologies and in allocating spectrum, the Commission may establish new technical operating standards: (a) RF equipment manufacturers must meet the new standards to receive an equipment authorization, and (b) RF equipment manufacturers must still comply with the Commission's requirements in FCC Form 731 and demonstrate compliance as required by 47 CFR Part 2 of FCC Rules. Thus, this information collection applies to a variety of RF equipment: (a) That is currently manufactured, (b) that may be manufactured in the future, and (c) that operates under varying technical standards. On July 8, 2004, the Commission adopted a *Report and Order,* Modification of Parts 2 and 15 of the Commission's Rules for Unlicensed Devices and Equipment Approval, ET Docket No. 03–201, FCC 04–165. The change requires that all paper filings required in 47 CFR Sections 2.913, 2.926(c), 2.929(c), and 2.929(d) of the rules are outdated and now must be filed electronically via the Internet on FCC Form 731. The Commission believes that electronic filing speeds up application processing and supports the Commission in further streamlining to reduce cost and increase efficiency. Information on the procedures for electronically filing equipment authorization applications can be obtained from the Commission's rules, and from the Internet at: *http://transition.fcc.gov/oet/ea/ea_app_info.htm.*

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–04263 Filed 2–26–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 31, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov*; and to Cathy Williams, FCC, via email *PRA@fcc.gov* <*mailto:PRA@fcc.gov*> and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0289.

Title: Section 76.76.601, Performance Tests; Section 76.1704, Proof of Performance Test Data; Section 76.1705, Performance Tests (Channels Delivered); 76.1717, Compliance with Technical Standards.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or Tribal Government.

Number of Respondents and Responses: 8,250 respondents; 12,185 responses.

Estimated Time per Response: 0.5–70 hours.

Frequency of Response: Recordkeeping requirement, Semi-annual and Triennial reporting requirements; Third party disclosure requirement.

Total Annual Burden: 276,125 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 624(e) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.601(b) requires the operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605(a) and shall be as follows:

(1) For cable television systems with 1,000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof

(e.g., 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, etc.). In addition, for technically integrated portions of cable systems that are not mechanically continuous (i.e., employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(a)(3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (e.g., 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217–300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit to 300 to 400 MHz, etc.). The channels selected for testing must be representative of all the channels within the cable television system.

(3) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

Note 1 to 47 CFR 76.601 states prior to additional testing pursuant to Section 76.601(c), the local franchising authority shall notify the cable operator, who will then be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected.

47 CFR 76.1704 requires that proof of performance test required by 47 CFR 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. If a signal leakage log is being used to meet proof of performance test recordkeeping requirement in accordance with Section 76.601, such a log must be retained for the period specified in 47 CFR 76.601(d).

47 CFR 76.1705 requires that the operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.

47 CFR 76.1717 states that an operator shall be prepared to show, on request by an authorized representative of the Commission or the local franchising authority, that the system does, in fact, comply with the technical standards rules in part 76, subpart K.

OMB Control Number: 3060–0433.

Title: Basic Signal Leakage Performance Report.

Form Number: FCC Form 320.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,920 respondents and 5,920 responses.

Frequency of Response: Recordkeeping requirement, Annual reporting requirement.

Estimated Time per Hour: 20 hours.

Total Annual Burden: 118,400 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Cable television system operators and Multichannel Video Programming Distributors (MPVDs) who use frequencies in the bands 108–137 and 225–400 MHz (aeronautical frequencies) are required to file a Cumulative Signal Leakage Index (CLI) derived under 47 CFR 76.611(a)(1) or the results of airspace measurements derived under 47 CFR 76.611(a)(2). This filing must include a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This yearly filing of FCC Form 320 is done in accordance with 47 CFR 76.1803. The records must be retained by cable operators.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–04264 Filed 2–26–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

February 24, 2014.

TIME AND DATE: 10:00 a.m., Thursday, March 6, 2014.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the following matters: *Secretary of Labor* v. *Twentymile Coal Co.,* Docket Nos. WEST 2009–241, et al., and *Secretary of Labor* v. *Twentymile Coal Co., Docket Nos. WEST 2009–1323, et al.* (Issues include whether the Administrative Law Judge erred in affirming citations for failing to provide additional insulation for a communications circuit.) Oral argument in these matters has previously been postponed twice because of severe weather problems.

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300

for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2014–04491 Filed 2–25–14; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

February 24, 2014.

TIME AND DATE: 2:00 p.m., Thursday, March 6, 2014.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Twentymile Coal Co.,* Docket Nos. WEST 2009–241, et al., and *Secretary of Labor* v. *Twentymile Coal Co., Docket Nos. WEST 2009–1323, et al.* (Issues include whether the Administrative Law Judge erred in affirming citations for failing to provide additional insulation for a communications circuit.) Public meetings in these matters have twice been postponed because of severe weather problems.

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2014–04492 Filed 2–25–14; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 2014.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *BancorpSouth, Inc.,* Tupelo, Mississippi; to merge with Ouachita Bancshares Corporation and thereby indirectly acquire Ouachita Independent Bank, both in Monroe, Louisiana.

2. *Bear State Financial Holdings, LLC, Little Rock, Arkansas and First Federal Bancshares of Arkansas, Inc.,* Harrison, Arkansas; to become bank holding companies by acquiring 100 percent of the voting shares of First National Security Company, Hot Springs, Arkansas, and thereby indirectly acquire Heritage Bank, N.A., Jonesboro, Arkansas, and First National Bank, Hot Springs, Arkansas.

Board of Governors of the Federal Reserve System, February 24, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–04272 Filed 2–26–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for the FTC's enforcement of the information collection requirements in its ''Fair Credit Reporting Risk-Based Pricing Regulations'' (''RBP Rule''), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the risk-based pricing provisions (subpart H) of the CFPB's Regulation V regarding other entities. That clearance expires on August 31, 2014.

DATES: Comments must be filed by April 28, 2014.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''RBP Rule, PRA Comment, P145403,'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/rbprulepra* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Katherine White, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2878, 600 Pennsylvania Ave. NW., Room NJ–3158, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[1] The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the CFPB most of the FTC's rulemaking authority for the risk-based pricing provisions of the Fair Credit Reporting Act (''FCRA''),[2] on July 21, 2011.[3]

The FTC retains rulemaking authority for the RBP Rule solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 15 U.S.C. 1681 *et seq.*

[3] Dodd-Frank Act, § 1061. This date was the ''designated transfer date'' established by the Treasury Department under the Dodd-Frank Act. *See* Dep't of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date,* 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, § 1062.

predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[4]

In addition, the FTC retains its authority to enforce the risk-based pricing provisions of the FCRA and the FTC and CFPB rules issued under those provisions. Thus, the FTC and CFPB have overlapping enforcement authority for many entities subject to the CFPB rule and the FTC has sole enforcement authority for the motor vehicle dealers subject to the FTC rule.

On December 21, 2011, the CFPB issued its interim final FCRA rule, including the risk-based pricing provisions (subpart H) of CFPB's Regulation V.[5] Contemporaneous with that issuance, the CFPB and FTC had each submitted to OMB, and received its approval for, the agencies' respective burden estimates reflecting their overlapping enforcement jurisdiction, with the FTC supplementing its estimates for the enforcement authority exclusive to it regarding the class of motor vehicle dealers noted above. The discussion below continues that analytical framework, as appropriately updated or otherwise refined for instant purposes.

Burden statement: Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must get OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules.

Under §§ 640.3–640.4 of the FTC's RBP Rule[6] and §§ 1022.72–1022.73 of the CFPB Rule,[7] a creditor must provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. Additionally, these provisions require disclosure of credit scores and information relating to credit scores in risk-based pricing notices if a credit score of the consumer is used in setting the material terms of credit.

The FTC's currently cleared burden totals, post-adjustment for the effects of the Dodd-Frank Act, are 13,319,471 hours.[8] The past burden analysis, however, was tied to the inception of the Rule and its later amendments, and included one-time burdens attributable to implementation. The FTC's updated estimate of burden hours reflects solely the recurring burden of complying with the Rule.

Using the currently cleared estimates (post-adjustment for the effects of the Dodd-Frank Act) for the number of applicable motor vehicle dealers and their assumed recurring disclosure burdens, in addition to the estimated number of and burden for other entities over which the FTC shares enforcement burden with the CFPB, the FTC proposes the following:

A. *Estimated number of respondents:* 160,875.[9]

B. *Burden Hours:* 9,652,500.

Yearly recurring burden of 60 hours per respondent[10] to modify and distribute notices × 160,875 respondents = 9,652,500 hours, cumulatively.

C. *Labor Costs:* $171,331,875.

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use correspondence clerks, at a mean hourly wage of $17.75,[11] to modify and distribute notices to consumers, for a cumulative labor cost total of $171,331,875.

D. *Capital/Non-Labor Costs:* $0.

The FTC believes that the FTC and CFPB rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (*e.g.,* offices and computers) for the information collections discussed above.

Request for Comment: Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before April 28, 2014.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 28, 2014. Write ''RBP Rule, PRA Comment, P145403,'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health

[4] *See* Dodd-Frank Act, § 1029(a), (c).

[5] 76 FR 79308 (Dec. 21, 2011).

[6] 16 CFR 640.3, –640.4.

[7] 12 CFR 1022.72, –1022.73.

[8] OMB Control No. 3084–0145.

[9] This estimate derives in part from an analysis of the figures obtained from the North American Industry Classification System (NAICS) Association's database of U.S. businesses. See *http://www.naics.com/search.htm.* Commission staff identified categories of entities under its jurisdiction that also directly provide credit to consumers. Those categories include retail, vehicle dealers, consumer lenders, and utilities. The estimate also includes state-chartered credit unions, which are subject to the Commission's jurisdiction. See 15 U.S.C. 1681s. For the latter category, Commission staff relied on estimates from the Credit Union National Association for the number of non-federal credit unions. See *http://www.ncua.gov/Legal/Documents/Reports/AR2012.pdf.* For purposed of estimating the burden, Commission staff made the conservative assumption that all of the included entities engage in risk-based pricing. The resulting tally of entities numbered 199,500. From this amount, the FTC deducted an estimated portion attributable to motor vehicle dealers in order to calculate a net amount in which to split evenly with the CFPB for the remaining number of respondents for purposes of estimating the FTC's overall share of PRA burden. The FTC estimated there were 122,250 motor vehicle dealers, determined as follows: 111,136 car dealers per NAICS data (57,535 new car dealers, 53,601 used car dealers) + 10% add-on approximation for other motor vehicle types (motorbikes, boats, other recreational). Excluding the estimated number of motor vehicle dealers, 122,250, from the estimated overall number of affected entities, 199,500, leaves 77,250 as the number of respondents for the agencies' 50:50 apportionment: 77,250, i.e., about 38,625 each. Thus, for the FTC, the estimated number of respondents for its calculations is 160,875 (122,250 + 38,625).

[10] Assumption: 5 hours per month per respondent.

[11] *http://www.bls.gov/news.release/pdf/ocwage.pdf:* Bureau of Labor Statistics, Economic News Release, March 29, 2013, Table 1, ''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2012.''

information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).[12] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/rbprulepra,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''RBP Rule, PRA Comment, P145403,'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 28, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2014–04235 Filed 2–26–14; 8:45 am]

BILLING CODE 6750–01–P

[12] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Opportunity for Hearing on Compliance of Florida State Plan Provisions Concerning Payment for Outpatient Hospital Services With Title XIX (Medicaid) of the Social Security Act

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of Opportunity for a Hearing; Compliance of Florida Medicaid State Plan Outpatient Hospital Benefit.

SUMMARY: This notice announces the opportunity for an administrative hearing to be held by April 28, 2014 at the CMS Atlanta Regional Office, 61 Forsyth Street SW., Suite 4T20, Atlanta, GA 30303–8909, to consider whether Florida provisions concerning payments for outpatient hospital services comply with the requirements of the Social Security Act as discussed in the [date of publication] letter sent to the state and published herein.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Benjamin R. Cohen, Hearing Officer, Centers for Medicare & Medicaid Services, 2520 Lord Baltimore Drive, Suite L, Baltimore, MD 21244, (301) 869–3169.

SUPPLEMENTARY INFORMATION: This notice announces the opportunity for an administrative hearing concerning the finding of the Administrator of the Centers for Medicare & Medicaid Services (CMS) that the state of Florida is not operating their outpatient hospital services in compliance with their approved state plan, or in compliance with the provisions of the Social Security Act (the Act), and the proposed withholding of Federal reimbursement of a portion of Florida's administrative dollars proportionate to outpatient hospital services. In particular, CMS has found that Florida has continued to implement a limit on the number of times a Medicaid beneficiary may visit an emergency department, even though CMS disapproved an amendment to add this limit to the Florida state plan. Consequently, Federal payments for a portion of the Federal funding of administrative costs will be withheld, subject for the opportunity for a hearing described below. This notice is being provided pursuant to the requirements of section 1904 of the Act, as implemented at 42 CFR 430.35 and 42 CFR 430, Subpart D.

Under section 1902(a)(10)(A) of the Act, a state plan must provide for making medical assistance available to eligible individuals, including for most eligible individuals the medical assistance specified in section 1905(a)(2) of the Act. This provision includes in the definition of medical assistance ''outpatient hospital services.'' Section 1902(a)(17) of the Act requires the state plan to include reasonable standards for determining the extent of medical assistance, and under section 1902(a)(19) of the Act, the state plan must assure that eligibility for care and services are provided in the best interest of the recipients. As the implementing regulations at 42 CFR 440.230(b) require, a state plan must ''specify the amount, duration, and scope of each service that it provides,'' and ''each service must be sufficient in amount, duration, and scope to reasonably achieve its purpose.'' While states may place ''appropriate limits on a service based on such criteria as medical necessity or utilization control procedures'' under CFR 440.230(d), 42 CFR 440.230(c) specifies that a state may not arbitrarily deny or reduce the amount, duration, or scope of required services, including physicians' services, solely because of the diagnosis, type of illness, or condition.

The proposed limitation on certain outpatient hospital services appeared to be based on the diagnosis, illness, or condition because it is limited to outpatient services furnished at a hospital emergency room, which are designed to address acute and immediate conditions. Thus, the limitation appeared to violate the requirements of 42 CFR 440.230(c). Even if that were not the case, the state did not demonstrate that the limitation is consistent with provision of a sufficient amount, duration, and scope to reasonably achieve the purpose of the benefit, which in this case would be providing reasonable coverage that meets the needs of most beneficiaries who need the outpatient hospital services, consistent with 42 CFR 440.230(b).

In disapproving SPA 12–015, CMS staff suggested to the state some

alternate methods to address inappropriate utilization of hospital emergency rooms, including the development of payment rates for hospital emergency rooms that are lower if the individual does not require care for an acute and immediate condition, or the use of the alternative cost sharing authority available to states under section 1916(d) of the Act, permitting higher beneficiary cost sharing for elective non-emergency use of the emergency room. CMS offered to work with the state on these options and technical assistance.

The state requested reconsideration of the denial of the state plan amendment.

During the course of the reconsideration proceedings, CMS became aware of Florida's continued implementation of the limitation on emergency department visits.

The notice to Florida containing the details concerning the compliance issue, the proposed withholding, opportunity for a hearing, and possibility of postponing and ultimately avoiding withholding by coming into compliance, reads as follows:

Justin M. Senior
Deputy Secretary for Medicaid
Florida Agency for Health Care Administration
2727 Mahan Drive, MS #8
Tallahassee, Florida 32308

Dear Mr. Senior:

This letter provides notice that the Centers for Medicare & Medicaid Services (CMS) has found that Florida is not providing all Medicaid beneficiaries with outpatient hospital benefits required under title XIX of the Social Security Act (the Act) and that until this deficiency is corrected (by making outpatient hospital services available to all beneficiaries entitled to such services), a portion of the Federal funding of the administrative costs associated with the operation of the Florida Medicaid program will be withheld, subject to the opportunity for Florida to request a hearing on this finding. The details of the finding, proposed withholding, opportunity for a hearing, and possibility of postponing and ultimately avoiding withholding by coming into compliance, are described in detail below.

Specifically, CMS has found that Florida is not providing beneficiaries with medical assistance for outpatient hospital services in accordance with the approved Florida State Plan, specifically by imposing numeric limits (six visits annually) on coverage of outpatient hospital visits furnished in hospital emergency departments. The approved state plan does not contain any numeric limitation on coverage of outpatient hospital services or services of a hospital emergency department. It is our understanding that Florida is nevertheless imposing a numeric limitation on such coverage.

This issue is related to the disapproval of a proposed state plan amendment that would have placed numeric limitations on outpatient hospital visits furnished in a hospital emergency department. Florida submitted the proposed amendment to the coverage provisions of the Medicaid state plan on September 14, 2012, to impose a limit of 6 visits per year to emergency departments. The proposed state plan amendment would have been effective on August 1, 2012. CMS disapproved the amendment on December 13, 2012, indicating that the limitation on outpatient services was not consistent with the requirements of section 1902 of the Social Security Act and implementing regulations because the limitation: 1) would not be consistent with the mandatory nature of the outpatient hospital services benefit under section 1902(a)(10)(A); 2) would not be a reasonable standard consistent with section 1902(a)(17) of the Act because it would arbitrarily deny coverage of outpatient hospital services, a mandatory benefit, based on the (emergency) condition of the patient; and 3) would not be consistent with the best interests of beneficiaries as required by section 1902(a)(19).

In disapproving the amendment, CMS suggested to the state some alternate methods to address inappropriate utilization of hospital emergency rooms, including the development of payment rates for hospital emergency rooms that are lower if the individual does not require care for an acute and immediate condition, or the use of the alternative cost sharing authority available to states under section 1916(d) of the Act, permitting higher beneficiary cost sharing for elective non-emergency use of the emergency room. CMS offered to work with the state on these options and technical assistance.

Florida requested reconsideration of the CMS disapproval of the amendment in February 2013. In the CMS response, CMS noted that the disapproval was also supported because the proposed coverage limitations has an exception to the limitation on emergency room visits for ''aliens'' that would violate the ''comparability'' requirements of section 1902(a)(10)(B) of the Act because it would provide that aliens would receive a greater amount, duration and scope of emergency outpatient hospital benefits than other individuals described in section 1902(a)(10)(A) of the Act.

During the course of the reconsideration process, CMS learned that Florida had implemented the six visit limit on hospital emergency department visits and was still applying the limit after the proposed amendment was disapproved. This means that Florida is not operating its program in accordance with the approved state plan. It should also be mentioned that Florida's submission of its quarterly expenditure reports through the CMS–64, includes a certification that the state is operating under the authority of its approved Medicaid state plan.

In light of our obligation to ensure that beneficiaries receive services to which they are entitled under the approved state plan, I am taking this compliance action to withhold a portion of the Federal Financial Participation (FFP) in state expenditures for administrative costs necessary to administer the Florida Medicaid program, subject to the opportunity for a hearing described below, until such time as I am satisfied that the state is complying with the Federal requirements described above. The withholding will initially be 10 percent of the Federal share of the state's quarterly claim for administrative expenditures allocable to outpatient hospital services, using an allocation method based on the proportion of total State Medicaid expenditures that were for outpatient hospital expenditures, as reported on Form CMS–64. The withholding percentage will increase by 5 percentage points (i.e. 15%, 20%, etc.) for every quarter in which the state remains out of compliance, up to a maximum withholding percentage of 100 percent (of administrative expenditures allocable to outpatient hospital services). The withholding will end when Florida implements a corrective action plan to bring its Medicaid program into compliance with Federal requirements.

The state has 30 days from the date of this letter to request a hearing. As specified in the accompanying Federal Register notice, we are providing an opportunity for an administrative hearing to ensure that you have an opportunity for a hearing prior to this determination becoming final. However, it is up to the state whether to go forward with this hearing. If a request for a hearing is timely submitted, the hearing will be convened by the Hearing Officer designated below no later than 60 days after the date of the Federal Register notice, or a later date by agreement of the parties and the Hearing Officer, at the CMS Regional Office in Atlanta, Georgia, in accordance with the procedures set forth in Federal

regulations at 42 CFR Part 430, Subpart D. The overall issue in any such appeal will be whether the Florida outpatient hospital benefit is consistent with Federal requirements. Any request for such a hearing should sent to the designated Hearing Officer. The Hearing Officer also should be notified if you request a hearing but cannot meet the timeframe expressed in this notice. Your Hearing Officer is:

Benjamin R. Cohen, Hearing Officer

Centers for Medicare & Medicaid Services

2520 Lord Baltimore Drive, Suite L

Baltimore, MD 21244

If the state requests a hearing but nevertheless plans to come into compliance with the approved state plan, please submit within 30 days of the date of this letter an explanation of how the state plans to come into compliance with Federal requirements and the timeframe for doing so. If that explanation is satisfactory, we may consider postponing the timing of the scheduled hearing (which would also delay the imposition of the withholding of funds). Our goal is to ensure compliance. We are available to provide further information or assistance on the steps necessary to bring the state into compliance with its approved state plan.

Should you not request a hearing within 30 days, a notice of withholding will be sent to you and the withholding of Federal funds will begin as described above.

If you have any questions or wish to discuss this determination further, please contact:

Jackie Glaze

Associate Regional Administrator

Division of Medicaid and Children's Health Operations

CMS Atlanta Regional Office

61 Forsyth Street SW., Suite 4T20

Atlanta, GA 30303–8909

Sincerely,

Marilynn Tavenner,

Administrator.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program.)

Dated: February 20, 2014.

Marilynn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–04290 Filed 2–26–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0717]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Evaluation of the Food and Drug Administration's General Market Youth Tobacco Prevention Campaign

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Evaluation of the Food and Drug Administration's General Market Youth Tobacco Prevention Campaign'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On February 7, 2014; the Agency submitted a proposed collection of information entitled ''Evaluation of the Food and Drug Administration's General Market Youth Tobacco Prevention Campaign'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0753. The approval expires on October 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: February 21, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–04271 Filed 2–26–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0110]

Agency Information Collection Activities: Proposed Collection; Comment Request; Prescription Drug Advertisements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements, including third party disclosure, contained in FDA's current regulations on prescription drug advertisements.

DATES: Submit either electronic or written comments on the collection of information by April 28, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane., Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in

the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prescription Drug Advertisements—(OMB Control Number 0910–0686)—Extension

Section 502(n) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 352(n)) requires that manufacturers, packers, and distributors (sponsors) who advertise prescription human and animal drugs, including biological products for humans, disclose in advertisements certain information about the advertised product's uses and risks. For prescription drugs and biologics, section 502(n) of the FD&C Act requires advertisements to contain ''* * * a true statement * * *'' of certain information including ''* * * information in brief summary relating to side effects, contraindications, and effectiveness * * *'' as required by regulations issued by FDA. FDA's prescription drug advertising regulations at § 202.1 (21 CFR 202.1) describe requirements and standards for print and broadcast advertisements. Section 202.1 applies to advertisements published in journals, magazines, other periodicals, and newspapers, and advertisements broadcast through media such as radio, television, and telephone communication systems. Print advertisements must include a brief summary of each of the risk concepts from the product's approved package labeling (§ 202.1(e)(1)). Advertisements that are broadcast through media such as television, radio, or telephone communications systems must disclose the major risks from the product's package labeling in either the audio or audio and visual parts of the presentation (§ 202.1(e)(1)); this disclosure is known as the ''major statement.'' If a broadcast advertisement omits the major statement, or if the major statement minimizes the risks associated with the use of the drug, the advertisement could render the drug misbranded in violation of section 502(n) of the FD&C Act, section 201(n) of the FD&C Act (21 U.S.C. 321(n)), and FDA's implementing regulations at § 202.1(e).

Advertisements subject to the requirements at § 202.1 are subject to the PRA because these advertisements disclose information to the public. In addition, § 202.1(e)(6) and (j) include provisions that are subject to OMB approval under the PRA.

Reporting to FDA

Section 202.1(e)(6) permits a person who would be adversely affected by the enforcement of a provision of § 202.1(e)(6) to request a waiver from FDA for that provision. The waiver request must set forth clearly and concisely the petitioner's interest in the advertisement, the specific provision of § 202.1(e)(6) from which a waiver is sought, a complete copy of the advertisement, and a showing that the advertisement is not false, lacking in fair balance or otherwise misleading, or otherwise violative of section 502(n) of the FD&C Act.

Section 202.1(j), which sets forth requirements for the dissemination of advertisements subject to the standards in § 202.1(e), contains the following information collection that is subject to the PRA:

Under § 202.1(j)(1), a sponsor must submit advertisements to FDA for prior approval before dissemination if: (1) The sponsor or FDA has received information that has not been widely publicized in medical literature that the use of the drug may cause fatalities or serious damage; (2) FDA has notified the sponsor that the information must be part of the advertisements for the drug; and (3) the sponsor has failed to present to FDA a program for assuring that such information will be publicized promptly and adequately to the medical profession in subsequent advertisements, or if such a program has been presented to FDA but is not being followed by the sponsor. Under § 202.1(j)(1)(iii), a sponsor must provide to FDA a program for assuring that significant new adverse information about the drug that becomes known (i.e., use of drug may cause fatalities or serious damage) will be publicized promptly and adequately to the medical profession in any subsequent advertisements. Under § 202.1(j)(4), a sponsor may voluntarily submit advertisements to FDA for comment prior to publication.

Disclosures to the Public

Under § 202.1, advertisements for human and animal prescription drug and biological products must comply with the standards described in that section.

Under § 202.1(j)(1), if information that the use of a prescription drug may cause fatalities or serious damage has not been widely publicized in the medical literature, a sponsor must include such information in the advertisements for that drug.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
202.1(e)(6)—Waiver request to FDA	1	1	1	12	12
202.1(j)(1)—Submission of advertisement to FDA for prior approval	1	1	1	2	2
202.1(j)(1)(iii)—Providing a program to FDA for assuring that adverse information about the drug will be publicized	1	1	1	12	12
202.1(j)(4)—Voluntarily submitting the advertisement to FDA prior to publication for comment	113	6	678	20	13,560

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total					13,586

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
202.1—Advertisements prepared in accordance with § 202.1	541	46.5	25,157	400	10,062,800
202.1(j)(1)—Including information about the drug's fatalities or serious damage in the advertisement	1	1	1	40	40
Total					10,062,840

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 24, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–04262 Filed 2–26–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration Center for Substance Abuse Prevention

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board (DTAB) will meet on March 17, 2014, from 9:00 a.m. to 4:30 p.m., and March 18, 2014, from 9:00 a.m. to 2:00 p.m. E.D.T. The DTAB will convene in both open and closed sessions on these two days.

On March 17, 2014, from 9:00 a.m. to 4:30 p.m., the meeting will be open to the public and will include updates on the previously announced DTAB recommendations, the medical review officer resources, the custody and control form, the Federal Drug-Free Workplace Programs, the National Laboratory Certification Program, and the Division of Workplace Programs-sponsored research studies. The meeting also will include drug testing updates from the Department of Transportation, the Department of Defense, the Nuclear Regulatory Commission, the Federal Drug-Free Workplace Programs, and the Drug Testing Index®.

The public is invited to attend the open session in person or to listen via web conference. Due to the limited seating space and call-in capacity, registration is requested. Public comments are welcome. To register, make arrangements to attend, obtain the web conference call-in numbers and access codes, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Advisory Committees Web site at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx* or contact the CSAP DTAB Designated Federal Official, Dr. Janine Denis Cook (see contact information below).

On March 18, 2014, from 9:00 a.m. to 2:00 p.m., the Board will meet in closed session to discuss proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. Therefore, this meeting is closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees Web site, *http://www.nac.samhsa.gov/DTAB/meetings.aspx*, or by contacting Dr. Cook.

Committee Name: Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention Drug Testing Advisory Board.

Dates/Time/Type: March 17, 2014, from 9:00 a.m. to 4:30 p.m. E.D.T.: OPEN; March 18, 2014, from 9:00 a.m. to 2:00 p.m. E.D.T.: CLOSED.

Place: Sugarloaf Conference Room, SAMHSA Building, 1 Choke Cherry Road, Rockville, Maryland 20850.

Contact: Janine Denis Cook, Ph.D., Designated Federal Official, CSAP Drug Testing Advisory Board, 1 Choke Cherry Road, Room 7–1043, Rockville, Maryland 20857, *Telephone:* 240–276–2600, *Fax:* 240–276–2610, *Email: janine.cook@samhsa.hhs.gov*.

Cathy J. Friedman,

Public Health Analyst, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2014–04291 Filed 2–26–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number FR- 5752–N–22]

Federal Housing Administration (FHA) Healthcare Facility Documents: Documents Eligible for Electronic Submission—30-Day Notice of Information Collection

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On March 14, 2013, HUD published in the **Federal Register** a notice that announced that FHA's healthcare facility documents completed the notice and comment processes under the Paperwork Reduction Act of 1995 (PRA), and had been assigned a control number, 2502–0605, by the Office of Management and Budget (OMB). The assignment of a control number concluded a 10-month process through which HUD solicited

public comment to update 115 healthcare facility documents to reflect current policy and practices, to improve accountability by all parties involved in FHA's healthcare facility transactions and strengthen risk management.

On September 10, 2013, HUD published a notice in the **Federal Register** that solicited, for a period of 60 days, public comment on this collection solely on the issue of which healthcare facility documents are eligible for electronic submission. HUD did not address this issue as part of the previous notice and comment process, but recognized the importance, efficiency, and reduction of burden that electronic submission of documents can achieve, and solicited public comment on the healthcare facility documents that HUD had determined may be submitted, but are not required to be submitted, electronically.

In addition, in response to comments received after March 14, 2013 by participants in healthcare facility transactions, HUD has made several changes to one of the documents, the Intercreditor Agreement, form HUD–92322–ORCF.

This notice provides for and solicits comment on the possibility of electronic submission, changes made to the Intercreditor Agreement and to the entire proposed collection of information. The entire collection subject to this notice is available for review at *www.hud.gov/232forms.*

The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comment Due Date:* March 31, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Patrick Fuchs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: John M. Hartung, Director, Policy and Risk Management Analysis, Office of Residential Care Facilities, Office of Healthcare Programs, Office of Housing, U.S. Department of Housing and Urban Development, 1222 Spruce Street, Room 3.203, St. Louis, MO 63103–2836; telephone (314) 418–5238 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. 2012 PRA Process on Substance of Healthcare Facility Documents

On May 3, 2012, at 77 FR 26304, and consistent with the PRA, HUD published a notice in the **Federal Register** seeking public comment for a period of 60 days (60-day Notice) on HUD's proposed update and revisions to a set of production, underwriting, asset management, closing, and other documents used in connection with transactions involving healthcare facilities, excluding hospitals (collectively, the healthcare facility documents), that are insured pursuant to section 232 of the National Housing Act (Section 232). In conjunction with publication of the 60-day Notice, the proposed revised healthcare facility documents (115 documents) were made available at: *www.hud.gov/232forms.* In addition to presenting unmarked versions of the documents, this Web site, to the extent applicable, presented the proposed healthcare facility documents as a redline/strikeout against the updated multifamily rental project closing documents to highlight the changes made to facilitate a healthcare transaction. Where the proposed healthcare facility documents were based on existing healthcare facility documents, the proposed healthcare facility documents, in addition to being presented in an unmarked format, were presented in redline/strikeout format so that reviewers could see the changes proposed to the existing healthcare facility documents.[1]

As a special outreach to the public on proposed changes to the healthcare facility documents and Section 232 program regulations, HUD hosted a forum on May 31, 2012, in Washington, DC. (See *http://portal.hud.gov/hudportal/HUD?src=/press/multimedia/videos.*) While comments were raised and discussed at the forum, HUD encouraged forum participants to file written comments through the *www.regulations.gov* Web site so that all comments would be more easily accessible to interested parties. All comments, whether submitted through *www.regulations.gov* or raised at the forum, were considered in the development of the revised documents which were published on November 21, 2012 (77 FR 69870), and for which, consistent with the PRA, comment was solicited for an additional 30 days (30-day Notice).

In the 30-day Notice, HUD identified substantive changes that were made to the healthcare facility documents in response to public comments submitted on the 60-day Notice, responded to significant issues raised by the commenters, and identified proposed additional changes based on further consideration of certain issues. As was the case with the 60-day Notice, HUD posted on its Web site the further revised healthcare facility documents in (1) a clean format, and (2) in redline/strikeout format, to show the changes made from the versions posted with issuance of the 60-day Notice.

On March 14, 2013, at 78 FR 16279, HUD published in the **Federal Register** a notice that announced the approval of the healthcare facility documents under the PRA and the assignment of a control number, 2502–0605, by OMB. In addition to announcing the assignment of an OMB control number, HUD advised in the March 14, 2013, notice that additional changes were made to the healthcare facility documents in response to comments submitted on the 30-day Notice. In the March 14, 2013, notice, HUD highlighted additional changes made to the healthcare facility documents, and once again, provided on HUD's Web site at *www.hud.gov/232forms,* the final versions of the documents in clean and redline/strikeout formats so that reviewers could see the final changes made to the documents and the clean final versions of the documents.

B. 2013 PRA Process on Eligibility of Electronic Submission

On September 10, 2013, at 78 FR 55282, HUD published in the **Federal Register** a notice solely seeking comment on the issue of which healthcare facility documents may be submitted electronically. Questions arose on this issue after conclusion of the 2012 PRA process.

In the September 10, 2013, notice, HUD advised that consistent with current practice, HUD requires applications for mortgage insurance to be submitted electronically, and that therefore any healthcare facility documents submitted as part of an application for mortgage insurance must be submitted electronically. Of the other healthcare facility documents, HUD identified 13 documents that must be submitted with original signatures, in hard copy format. These documents are the following: Healthcare Regulatory Agreement—Borrower (HUD–92466–

[1] Along with the 60-day Notice, HUD published in the **Federal Register** on May 3, 2012, at 77 FR 26218, a proposed rule that proposed to strengthen regulations for HUD's Section 232 program to reflect current policy and practices, and to improve accountability and strengthen risk management. A final rule following the May 3, 2012, proposed rule, and taking into consideration public comment received on the proposed rule, was published on September 7, 2012, at 77 FR 55120.

ORCF); Healthcare Regulatory Agreement—Operator (HUD–92466A–ORCF); Management Certification—Residential Care Facility (HUD–9839–ORCF); Lender Certification (HUD–92434–ORCF); Offsite Bond—Dual Obligee (HUD–92479–ORCF); Performance Bond—Dual Obligee (HUD–92452–ORCF); Payment Bond (HUD–92452A–ORCF); Request for Endorsement (HUD–92455–ORCF); Request for Final Endorsement (HUD–92023–ORCF); Guide for Opinion for Master Tenant's Counsel (HUD–92335–ORCF); Healthcare Regulatory Agreement—Master Tenant (HUD–92337–ORCF); Guide for Opinion of Borrower's Counsel (HUD–91725–ORCF); and Guide for Opinion of Operator's Counsel and Certification (HUD–92325–ORCF). For any of the remaining healthcare facility documents (which must be submitted electronically) or the listed 13 documents (which must be submitted in hard copy), the September 10, 2013, notice advised that HUD neither requires nor prohibits that any of the remaining documents be submitted electronically. Electronic submission is an option.

In the 2012 PRA process, HUD's 30-day Notice, HUD listed in a table all the documents for which approval under the PRA was sought and provided the burden hours and costs calculated for preparation of and submission of each of documents and provided a total aggregate annual cost of $4,393,301. (See 77FR 69887–69889). This table, revised with updated information on burden hours and costs, is included at the end of this notice.

In the September 10, 2013, notice, HUD included the table below, which provides a breakdown of the estimated costs involved in hard copy preparation and shipping, and estimates a $450,000 annual savings in costs if documents are submitted electronically rather than in hard copy.

Item	Cost per item	Costs
Printing by Lender	1,500 pages at $.04 per page	$60.00
Lender Box Preparation	$50 per hour and two hours per box	100.00
Shipping by Lender to HUD in Field	1–40 lb. box	20.00
HUD processing preparation (Field and HQ)	$50 per hour and 1 hour per box	50.00
Shipping by HUD Field to HQ	1–40 lb. box	20.00
Total		[1] 250.00
Estimated # Boxes per project	3	
Estimated # of projects per year	600	
Total Annual Costs	(# of boxes × # of projects × cost per box)	450,000.00

[1] Per box.

C. Summary of Changes to the Intercreditor Agreement—Section 232 (HUD 92322–ORCF).

Because of a substantial number of comments from participants in healthcare facility programs after the conclusion of the 2012 PRA process, HUD has revised the Intercreditor Agreement (form HUD–92322). A redline/strikeout showing each proposed change in the revised Intercreditor Agreement is available at *www.hud.gov/232forms*. The significant changes, however, can be summarized as follows:

(1) AR Loan Obligations

The definition of what constitutes an AR Loan Obligation was revised. In this regard, instead of delineating particular forms of indebtedness, liabilities, and obligations that must be excluded and may not constitute AR Loan Obligations, the revised definition takes a broader approach, requiring AR Loan Obligations to be directly related to the benefit of the Facility.

(2) Cut-Off Time & Ceased Funding

''Cut-Off Time'' is when HUD will no longer subordinate its interest in the accounts receivable of the operator. The events that trigger a Cut-Off Time were clarified. Specifically, rather than allow any defaults to trigger a Cut-Off Time, the revised document introduces the defined term ''Ceased Funding'' in order to clarify that only defaults of the AR Loan resulting in the AR Lender ceasing to fund trigger a Cut-Off Time.

(3) Notices and Consent Rights

Clarifications were made to HUD and FHA Lender's notice and consent rights to address specifically certain potentially troubling scenarios. The revised document clarifies that AR ''over-line'' advances (over the agreed maximum commitment amount) require prior written consent by FHA Lender and HUD, but that, within some agreed-upon limits, advances within the maximum commitment amount (but over the borrowing base formula) only require notice not consent. Clarifications were also made to the provision setting forth what modifications can be made to the AR Loan documents without FHA Lender or HUD consent.

D. Summary of Comments Solicited

HUD received no comments in response to the **Federal Register** Notice published on September 10, 2013. In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting, for an additional 30 days, comments from members of the public and interested parties on:

(1) Whether the documents identified by HUD for originally signed, hard copy submission are necessary in such format for proper performance of the transactions in which the documents are used;

(2) Whether any of the documents not identified as necessary for originally signed, hard copy submission should be submitted only in originally signed, hard copy;

(3) The accuracy of the agency's estimate of the reduced burden and reduced costs for submission of documents electronically;

(4) Whether electronic submission of application documents enhances the utility and efficiency of the transactions in which the documents are used;

(5) Whether electronic submission of other documents enhances the utility and efficiency of the transactions in which the documents are used;

(6) Additional ways, through information technology, to minimize the burden of the collection of information on those who are to respond;

(7) Whether the agency's estimate of the burden of the proposed collection of information is accurate;

(8) Whether the proposed collection of information enhances the utility and efficiency of the transactions in which the documents are used; and

(9) Whether the proposed changes to the Intercreditor Agreement enhance the utility and efficiency of the transactions for which the document is used.

A list of the entire document collection is provided below.

New form No.	Form name	Number of respondents	Frequency of response	Response per annum	Average burden per hour per response	Annual burden hours	Average hourly cost per response	Annual cost
Lender Narratives:								
HUD–9001–ORCF	Lender Narrative 223a7—Main	30	2.5	75	22.00	1,650	$75	$123,750
HUD–9001a–ORCF	Lender Narrative 223a7–Addenda–PCNA	30	2.5	75	1.50	112.5	75	8,438
HUD–9001b–ORCF	Lender Narrative 223a7.223d.232i–Addendum—ALTA/ACSM Land Title Survey.	30	2.5	75	0.50	37.5	75	2,813
HUD–9001c–ORCF	Lender Narrative 223a7–Addendum–Environmental.	30	2.5	75	0.50	37.5	75	2,813
HUD–9001d–ORCF	Lender Narrative 223a7–Addendum—Other Existing Eligible Indebtedness.	30	2.5	75	0.50	37.5	75	2,813
HUD–9001e–ORCF	Lender Narrative 223a7.223d.232i–Addendum–Principal of Borrower.	30	2.5	75	0.50	37.5	75	2,813
HUD–9001f–ORCF	Lender Narrative 223a7.223d.232i–Addendum–Operator.	20	2.5	50	0.50	25	75	1,875
HUD–9001g–ORCF	Lender Narrative 223a7.223d.232i–Addendum–Management Agent.	12	2.5	30	0.50	15	75	1,125
HUD–9001h–ORCF	Lender Narrative 223a7.223d.232i–Addendum–Transfer of Physical Assets.	30	2.5	75	0.50	37.5	75	2,813
HUD–9001i–ORCF	Lender Narrative 223a7.223d.232i–Addendum–AR Financing.	30	2.5	75	0.50	37.5	75	2,813
HUD–9002–ORCF	Lender Narrative 223f	30	7.5	225	70.00	15,750	75	1,181,250
HUD–9003–ORCF	Lender Narrative 241a	4	1	4	73.00	292	75	21,900
HUD–9004–ORCF	Lender Narrative—New Construction—Single Stage.	10	2	20	87.00	1,740	75	130,500
HUD–9005–ORCF	Lender Narrative—New Construction—2 Stage Initial Submittal.	10	2	20	63.00	1,260	75	94,500
HUD–9005a–ORCF	Lender Narrative—New Construction—2 Stage Final Submittal.	10	2	20	53.00	1,060	75	79,500
HUD–9006–ORCF	Lender Narrative—Substantial Rehabilitation—Single Stage.	4	1	4	93.00	372	75	27,900
HUD–9007–ORCF	Lender Narrative—Substantial Rehabilitation—2 Stage Initial Submittal.	4	1	4	70.00	280	75	21,000
HUD–9007a–ORCF	Lender Narrative—Substantial Rehabilitation—2 Stage Final Submittal.	4	1	4	70.00	280	75	21,000
HUD–9008–ORCF	Lender Narrative—Blended Rate—Single Stage.	4	1	4	70.00	280	62	17,360
HUD–90025–ORCF	Lender Narrative—Blended Rate—2 Stage—Initial Submittal.	4	1	4	70.00	280	75	21,000
HUD–90025a–ORCF	Lender Narrative—Blended Rate—2 Stage—Final Submittal.	4	1	4	70.00	280	75	21,000
HUD–9009–ORCF	Lender Narrative 232(i)—Fire Safety Equipment Installation, without Existing HUD Insured Mortgage.	5	2	10	15.00	150	62	9,300
HUD–90010–ORCF	Lender Narrative 232(i)—Fire Safety Equipment Installation, with Existing HUD Insured Mortgage.	5	2	10	15.00	150	62	9,300
HUD–90011–ORCF	Lender Narrative 223(d)—Operating Loss Loan.	1	2	2	15.00	30	62	1,860
HUD–9444–ORCF	Lender Narrative Cost Certification Supplement.	2	2	4	15.00	60	75	4,500
Production Certifications:								
HUD–90012–ORCF	Consolidated Certification—Lender	30	2.5	75	1.00	75	67	5,025
HUD–90013–ORCF	Consolidated Certification—Borrower	77	1	77	1.00	77	75	5,775

New form No.	Form name	Number of respondents	Frequency of response	Response per annum	Average burden per hour per response	Annual burden hours	Average hourly cost per response	Annual cost
HUD–90014–ORCF	Consolidated Certification—Principal of the Borrower.	38	2	76	1.00	76	75	5,700
HUD–90015–ORCF	Consolidated Certification—Operator	35	2	70	1.00	70	75	5,250
HUD–90016–ORCF	Consolidated Certification—Parent of Operator.	35	2	70	1.00	70	75	5,250
HUD–90017–ORCF	Consolidated Certification—Management Agent.	35	2	70	1.00	70	75	5,250
HUD–90018–ORCF	Consolidated Certification—Contractors	4	1	4	1.50	6	75	450
HUD–90019–ORCF	Auditor Certification	3	1	3	0.50	1.5	67	101
HUD–90022–ORCF	Certification for Electronic Submittal	35	10	350	0.50	175	67	11,725
HUD–9445–ORCF	Certification of Outstanding Obligations	35	10	350	1.00	350	83	29,050
HUD–91118–ORCF	Borrower's Certification—Completion of Critical Repairs.	240	1	240	0.50	120	75	9,000
HUD–92434–ORCF	Lender Certification	35	10	350	1.00	350	75	26,250
HUD–91130–ORCF	Building Code Certification	26	2	52	0.50	26	83	2,158
Construction Documents:								
HUD–91123–ORCF	Design Professional's Certification of Liability Insurance.	26	2	52	0.50	26	83	2,158
HUD–91124–ORCF	Design Architect Certification	26	2	52	0.50	26	83	2,158
HUD–91127–ORCF	Financial Statement Certification—General Contractor.	26	2	52	0.50	26	67	1,742
HUD–92408–ORCF	HUD Amendment to B108	26	2	52	0.50	26	75	1,950
HUD–95379–ORCF	HUD Representative's Trip Report	26	28	728	1.00	728	75	54,600
HUD–91129–ORCF	Lender Certification for New Construction Cost Certifications.	10	5.2	52	3.00	156	75	11,700
HUD–9442–ORCF	Memo for Post-Commitment Early Start of Construction Request.	3	2	6	1.00	6	75	450
HUD–92415–ORCF	Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance (Post-Commitment Early Start of Construction).	3	2	6	0.50	3	83	249
HUD–93305–ORCF	Agreement and Certification	10	5.2	52	0.50	26	75	1,950
HUD–92441–ORCF	Building Loan Agreement	10	5.2	52	1.00	52	75	3,900
HUD–92441a–ORCF	Building Loan Agreement Supplemental	10	5.2	52	1.00	52	75	3,900
HUD–92450–ORCF	Completion Assurance	10	5.2	52	0.50	26	75	1,950
HUD–92442–ORCF	Construction Contract	10	5.2	52	1.00	52	75	3,900
HUD–92554–ORCF	Supplementary Conditions of the Contract for Construction.	10	5.2	52	0.50	26	217	5,642
HUD–92456–ORCF	Escrow Agreement for Incomplete Construction.	3	2	6	0.50	3	75	225
HUD–92479–ORCF	Offsite Bond—Dual Obligee	5	3	15	0.50	7.5	75	563
HUD–92452–ORCF	Performance Bond—Dual Obligee	5	5.2	26	0.50	13	217	2,821
HUD–92452A–ORCF	Payment Bond	5	5.2	26	0.50	13	75	975
HUD–92455–ORCF	Request for Endorsement	10	5.2	52	1.00	52	75	3,900
HUD–92023–ORCF	Request for Final Endorsement	10	5.2	52	1.00	52	75	3,900
HUD–92412–ORCF	Working Capital Escrow	10	5.2	52	0.50	26	75	1,950
HUD–91125–ORCF	Staffing Schedule	30	5.83	174.9	1.00	174.9	62	10,844
Additional ORCF Documents:								
HUD–91708–ORCF	Agreement for Payment of Real Property Taxes.	1	1	1	1.00	1	83	83
HUD–92576A–ORCF	Certificate of Need for Health Facility	3	2	6	0.50	3	83	249
HUD–90024–ORCF	Contact Sheet	35	10	350	1.00	350	67	23,450
HUD–91126–ORCF	Financial Statement Certification	150	7	1,050	0.50	525	67	35,175
HUD–91116–ORCF	Addendum to Operating Lease	30	6.5	195	0.50	97.5	217	21,158

HUD–941–ORCF	Lenders FHA Number Request Form	30	11.7	351	0.50	175.5	62	10,881
HUD–92264a–ORCF	Maximum Insurable Loan Calculation	30	11.7	351	2.00	702	83	58,266
HUD–2–ORCF	Request for Waiver of Housing Directive	20	8	160	1.00	160	75	12,000
HUD–91119–ORCF	Schedule of Facilities Owned Operated or Managed.	35	10	350	1.50	525	75	39,375
HUD–91110–ORCF	Subordination, Non-Disturbance and Attornment Agreement of Operating Lease (SNDA).	30	11.7	351	0.50	175.5	233	40,892
HUD–91111–ORCF	Survey Instructions and Borrower's Certification.	180	1.5	270	0.50	135	83	11,205
HUD–91112–ORCF	Request of Overpayment of Firm Application Exam Fee.	15	5.13	76.95	0.50	38.475	67	2,578
HUD–9839–ORCF	Management Certification—Residential Care Facility.	5	1	5	0.50	2.5	75	188
HUD–92466–ORCF	Healthcare Regulatory Agreement—Borrower.	35	10	350	0.50	175	217	37,975
HUD–92466A–ORCF	Healthcare Regulatory Agreement—Operator.	10	2	20	0.50	10	217	2,170
HUD–94000–ORCF	Security Instrument/Mortgage/Deed of Trust	35	10	350	0.50	175	217	37,975
HUD–92070–ORCF	Lease Addendum	2	1	2	0.50	1	217	217
HUD–94001–ORCF	Healthcare Facility Note	35	10	350	1.00	350	75	26,250
HUD–91710–ORCF	Residual Receipts Note—Non Profit Mortgagor.	5	2	10	0.50	5	75	375
HUD–92420–ORCF	Subordination Agreement—Financing	7	2	14	0.50	7	217	1,519
HUD–92223–ORCF	Surplus Cash Note	7	2	14	0.50	7	75	525
HUD–2205A–ORCF	Borrower's Certificate of Actual Cost	30	7.5	225	3.50	787.5	75	59,063
HUD–92323–ORCF	Operator Security Agreement	30	6.5	195	1.00	195	200	39,000
Escrow Documents:								
HUD–91128–ORCF	Initial Operating Deficit Escrow Calculation Template.	11	5	55	1.50	82.5	83	6,848
HUD–92414–ORCF	Latent Defects Escrow	20	12	240	0.50	120	75	9,000
HUD–9443–ORCF	Minor Moveable Escrow	26	2	52	1.00	52	83	4,316
HUD–92476–ORCF	Escrow Agreement Noncritical Deferred Repairs.	20	12	240	0.50	120	75	9,000
HUD–92476B–ORCF	Escrow Agreement for Operating Deficits	12	4.8	57.6	0.50	28.8	75	2,160
HUD–92464–ORCF	Request Approval Advance of Escrow Funds.	35	15	525	1.00	525	75	39,375
Asset Management Documents:								
HUD–92266–ORCF	Application for Transfer of Physical Assets (TPA).	25	2	50	1.00	50	83	4,150
HUD–93332–ORCF	Certification of Exigent Health & Safety (EH&S) Issues.	456	1	456	1.00	456	75	34,200
HUD–93333–ORCF	Certification Physical Condition in Compliance.	208	1	208	0.50	104	83	8,632
HUD–93486–ORCF	Computation of Surplus Cash	70	1	70	0.50	35	62	2,170
HUD–9250–ORCF	Funds Authorizations	500	5.6	2800	1.00	2800	75	210,000
HUD–9250A–ORCF	Borrower Certification and Request Detail	15	2	30	1.00	30	75	2,250
HUD–92228–ORCF	Model Form Bill of Sale and Assignment	20	2	40	0.50	20	83	1,660
HUD–92117–ORCF	Borrower's Certification—Completion of Non-Critical Repairs.	250	2	500	0.50	250	75	18,750
HUD–92417–ORCF	Personal Financial and Credit Statement	175	6	1050	3.50	3675	83	305,025
HUD–93479–ORCF	Schedule A—Monthly Report for Establishing Net Income.	60	2	120	1.00	120	75	9,000
HUD–93480–ORCF	Schedule B—Schedule of Disbursements	60	12	720	1.00	720	75	54,000
HUD–93481–ORCF	Schedule C—Schedule of Accounts Payable	60	12	720	1.00	720	75	54,000
Accounts Receivable Documents:								

New form No.	Form name	Number of respondents	Frequency of response	Response per annum	Average burden per hour per response	Annual burden hours	Average hourly cost per response	Annual cost
HUD–90020–ORCF	A/R Financing Certification	50	3	150	0.50	75	217	16,275
HUD–92322–ORCF	Intercreditor Agreement (for AR Financed Projects).	30	5	150	1.50	225	200	45,000
Master Lease Documents:								
HUD–92211–ORCF	Master Lease Addendum	5	5	25	1.00	25	217	5,425
HUD–92331–ORCF	Cross-Default Guaranty of Subtenants	30	5.83	175	1.00	174.9	217	37,953
HUD–92333–ORCF	Master Lease SNDA	30	5.83	175	0.50	87.45	217	18,977
HUD–92335–ORCF	Guide for Opinion of Master Tenant's Counsel.	30	5.83	175	1.00	174.9	217	37,953
HUD–92337–ORCF	Healthcare Regulatory Agreement—Master Tenant.	30	5.83	175	0.50	87.45	217	18,977
HUD–92339–ORCF	Master Lease Estoppel Agreement	30	5.83	175	0.50	87.45	217	18,977
HUD–92340–ORCF	Master Tenant Security Agreement	30	5.83	175	1.00	174.9	217	37,953
Additional Legal Documents:								
HUD–91117–ORCF	Operator Estoppel Certificate	100	2	200	0.50	100	275	27,500
HUD–91725–INST–ORCF	Instructions to Guide for Opinion of Borrower's and Operator's Counsel.	35	10	350	0.00	0	217	0
HUD–91725–CERT–ORCF	Exhibit A to Opinion of Borrower's Counsel—Certification.	35	10	350	0.50	175	217	37,975
HUD–91725–ORCF	Guide for Opinion of Borrower's Counsel	35	10	350	2.00	700	217	151,900
HUD–92325–ORCF	Guide for Opinion of Operator's Counsel and Certification.	30	6.5	195	1.50	292.5	200	58,500
TOTALS		4,568	539	20,322	8.30	44,221	105	3,794,809

Comments must be received by March 31, 2014. Comments must refer to the proposal by name and docket number (FR–5623–N–05) and interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Patrick Fuchs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

HUD Desk Officer,
Office of Management and Budget,
New Executive Office Building,
Washington, DC 20503,
Fax number: (202) 395–6947
and
Colette Pollard,
Office of the Chief Information Officer,
Department of Housing and Urban Development,
451 Seventh Street SW.,
Room 4178,
Washington, DC 20410.

Dated: February 20, 2014.

Colette Pollard,

Department Reports Management Officer—Office of the Chief Information Officer.

[FR Doc. 2014–04237 Filed 2–26–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2014–N034: FF09M21200–134–FXMB1231099BPP0]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Federal Fish and Wildlife Permit Applications and Reports—Migratory Birds and Eagles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on February 28, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before March 31, 2014.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (email). Please include ''1018–0022'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

Information Collection Request

OMB Control Number: 1018–0022.

Title: Federal Fish and Wildlife License/Permit Applications and Reports, Migratory Birds and Eagles, 50 CFR 10, 13, 21, and 22.

Service Form Numbers: 3–200–6 through 3–200–9, 3–200–10a through 3–200–10f, 3–200–12 through 3–200–16, 3–200–18, 3–200–67, 3–200–68, 3–200–71, 3–200–72, 3–200–77, 3–200–78, 3–200–79, 3–200–81, 3–200–82, 3–202–1 through 3–202–17, 3–186, and 3–186A.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Individuals; zoological parks; museums; universities; scientists; taxidermists; businesses; utilities; and Federal, State, tribal, and local governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Estimated Number of Annual Responses: 61,623.

Estimated Completion Time per Response: Varies from 15 minutes to 452 hours, depending on activity.

Estimated Annual Burden Hours: 106,661.

Estimated Annual Nonhour Burden Cost: $1,520,525 for permit application fees.

Abstract: Our Regional Migratory Bird Permit Offices use information that we collect on permit applications to determine the eligibility of applicants for permits requested in accordance with the criteria in various Federal wildlife conservation laws and international treaties, including:

(1) Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).

(2) Lacey Act (16 U.S.C. 3371 et seq.).

(3) Bald and Golden Eagle Protection Act (16 U.S.C. 668).

Service regulations implementing these statutes and treaties are in chapter I, subchapter B of title 50 of the Code of Federal Regulations (CFR). These regulations stipulate general and specific requirements that, when met, allow us to issue permits to authorize activities that are otherwise prohibited.

All Service permit applications are in the 3–200 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits. The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity.

This ICR also includes the burden for permit applications and report forms for long-term eagle take permits that is currently approved under OMB Control Number 1018–0151. Once OMB takes action on this IC, we will discontinue OMB Control No. 1018–0151.

Comments Received and Our Responses

On November 13, 2013, we published in the **Federal Register** (78 FR 68086) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on January 13, 2014. We received one comment from the American Bird Conservancy (ABC).

The commenter stressed that while ''there are ways that the quality, utility and clarity of the information to be collected can be enhanced and ways that a system can be streamlined to minimize burden of the collection of information on respondents. . .,'' he emphasized that ''the minimum amount of information to be collected must allow the USFWS to make a valid determination that the proposed action is permissible under the law. Information regarding impact on wild populations, proposed use of the specimens, and explanations of necessary mitigation/compensation, when required are thus critical for allowing the USFWS to do its important job of protecting our public trust resources for the benefit of all.''

We appreciate ABC's comments because they recognize the importance of collecting sufficient information from applicants and permittees to ensure that the applicant qualifies for the permit, that issuance of the permit meets

issuance criteria, and that report information is sufficient to allow both enforcement of the permits, and, particularly where wild birds are concerned, that the report information collected contributes to our knowledge of the impacts of utilities and other entities on migratory birds, including eagles.

A significant change we are making is to convert the report form for Special Purpose Utility permits (3–202–17) from paper to electronic format. These permits allow utilities such as electric, wind, and solar companies to collect birds found dead on their property. The data will be housed in the Avian Injury/Mortality Reporting System (AIMRS). Our goal is to make reporting more convenient for permittees, but electronic submission will be particularly beneficial for the Service, because it will make the data accessible for analysis without staff having to enter it manually. This will make the data on this important source of mortality readily available to biologists who are monitoring the impacts of incidental take and working with industry to identify best practices to reduce those impacts.

Request for Public Comments

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Availability of Public Comments

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: February 24, 2014.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2014–04319 Filed 2–26–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5B711.IA000814]

Land Acquisitions; Mechoopda Indian Tribe of Chico Rancheria of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination; Technical Correction.

SUMMARY: This document makes a technical correction to the acreage estimate and the land description contained in the notice published on Wednesday, February 5, 2014, 79 FR 6917. The notice concerns the final agency determination to acquire approximately 626.55 acres of land in trust for the Mechoopda Indian Tribe of Chico Rancheria of California for gaming and other purposes.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: On January 24, 2014, the Assistant Secretary—Indian Affairs issued a final agency determination to acquire approximately 626.55 acres of land in trust for the Mechoopda Indian Tribe of Chico Rancheria of California (Tribe) for gaming and other purposes. Notice of the January 24, 2014 final agency determination was published in the **Federal Register** on February 5, 2014. 79 FR 6917. The **Federal Register** Notice published on February 5, 2014, did not reflect an estimate that had been prepared by the Bureau of Land Management using the Geographic Information Systems (GIS) model. This technical correction does not change the footprint of the acquisition published on February 5, 2014, it merely provides a more accurate estimate of the total acreage within the boundaries of the January 24, 2014 final agency determination. The **Federal Register** Notice published on February 5, 2014, is now clarified to reflect the GIS model estimate of approximately 631 acres.

Furthermore, the land description in the February 5, 2014, notice is correct, but has been amended by the Bureau of Indian Affairs to eliminate unnecessary or duplicative information. On pages 6917 and 6918 of the February 5, 2014, **Federal Register,** the land description is amended to read as follows:

Parcel I

All that portion of the east half of the northeast quarter of Section 1, Township 20 North, Range 2 East, M.D.B. & M., lying easterly of U.S. Highway 99E.

Excepting therefrom that portion thereof, heretofore conveyed to the State of California by deed recorded July 27, 1951, in Book 575, Page 326, Official Records, recorded October 9, 1974, in Book 1944, Page 64, Official Records and October 9, 1974, in Book 1944, Page 68, Official Records.

Parcel II

The north half of the northwest quarter, the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of Section 5, and all that portion of Section 6 lying northeasterly of the Oroville Chico Highway, all in Township 20 North, Range 3 East, M.D.B. & M.

Excepting therefrom said Section 6, that portion conveyed to the State of California by Deed recorded July 27, 1951 in Book 575, Page 326, Official Records.

Also excepting therefrom that portion conveyed to the State of California by Deed recorded October 9, 1974, in Book 1944, Page 64, Official Records.

APN 041–190–048–00 (PARCEL I) and APN 041–190–045–000 (PARCEL II).

A copy of the decision dated January 24, 2014 is available at: *http://www.indianaffairs.gov/cs/groups/webteam/documents/text/idc1-025066.pdf.*

Dated: February 19, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–04267 Filed 2–26–14; 8:45 am]

BILLING CODE 4310–4N–P

NATIONAL INDIAN GAMING COMMISSION

2014 Preliminary Fee Rate and Fingerprint Fees

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.2, that the National Indian Gaming Commission has adopted its 2014 preliminary annual fee rates of 0.00% for tier 1 and 0.072% (.00072) for tier 2. These rates have not changed since 2013 and shall apply to

all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the 2014 preliminary fee rate on Class II revenues shall be one-half of the annual fee rate, which is 0.036% (.00036).

Pursuant to 25 CFR 514.16, the National Indian Gaming Commission has also adopted its fingerprint processing fees of $22 per card.

Both the preliminary fee rate and fingerprint fees being adopted here are effective March 1st, 2014 and will remain in effect until new rates are adopted.

FOR FURTHER INFORMATION CONTACT: Yvonne Lee, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005; telephone (202) 632–7003; fax (202) 632–7066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission, which is charged with, among other things, regulating gaming on Indian lands.

Commission regulations (25 CFR part 514) provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates and the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission. All gaming operations within the jurisdiction of the Commission are required to self administer the provisions of these regulations, and report and pay any fees that are due to the Commission. As noted above, if a tribe has a certificate of self-regulation under 25 CFR part 518 the 2014 preliminary fee rate on Class II revenues shall be one-half of the annual fee rate, which is 0.036% (.00036).

Pursuant to 25 CFR part 514, the Commission must also review annually the costs involved in processing fingerprint cards and set a fee based on fees charged by the Federal Bureau of Investigation and costs incurred by the Commission. Commission costs include Commission personnel, supplies, equipment costs, and postage to submit the results to the requesting tribe. Based on that review, the Commission hereby sets the 2014 fingerprint processing fee at $22 per card.

Dated: February 24, 2014.

Jonodev O. Chaudhuri,

Acting Chairman.

Dated: February 24, 2014.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2014–04317 Filed 2–26–14; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–BSAD–CONC–15010; PPWOBSADC0, PPMVSCS1Y.Y00000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; National Park Service Leasing Program

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on February 28, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before March 31, 2014.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Information Collection Clearance Officer, National Park Service, 1849 C Street NW. (2601), Washington, DC 20240 (mail); or *madonna_baucum@nps.gov* (email). Please reference OMB Control Number 1024–0233 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Ben Erichsen at (202) 513–7156 (telephone) or at *Ben Erichsen@nps.gov* (email). 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 National Park Service leasing program allows the public to lease property located within the boundaries of the park system, under the authority of the Director of the National Park Service. A lease may not authorize an activity that could be authorized by a concessions contract or commercial use authorization. All leases must provide for the payment of fair market value rent. The Director may retain rental payments for park infrastructure needs and, in some cases, to provide administrative support of the leasing program.

Our authority to collect information for the leasing program is derived from section 802 of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391), the National Historic Preservation Act (Pub. L. 89–665), and Title 36, Code of Federal Regulations, section 18 (36 CFR 18). For competitive leasing opportunities, the regulations require the submission of proposals or bids by parties interested in applying for a lease. The regulations also require that the Director approve lease amendments, construction or demolition of structures, and encumbrances on leasehold interests.

We collect Information from anyone who wishes to submit a bid or proposal to lease a property. The Director may issue a request for bids if the amount of rent is the only criterion for award of a lease. The Director issues a request for proposals when the award of a lease is based on selection criteria other than the rental rate. A request for proposals may be preceded by a request for qualifications to select a ''short list'' of potential offerors that meet minimum management, financial, and other qualifications necessary for submission of a proposal.

The Director may enter into negotiations for a lease with nonprofit organizations and units of government without soliciting proposals or bids. In those cases, the Director collects information from the other party regarding the planned use of the premises, potential modifications to the premises, and other information as necessary to support a decision on whether or not to enter into a lease.

We also collect Information from existing leaseholders who seek to:

- Sublet a leased property or assign the lease to a new lessee.
- Construct or demolish portions of a leased property.
- Amend a lease to change the type of activities permitted under the lease.
- Encumber (mortgage) the leased premises.

We use the information to evaluate offers, proposed subleases or

assignments, proposed construction or demolition, the merits of proposed lease amendments, and proposed encumbrances. The completion times for each information collection requirement vary substantially depending on the complexity of the leasing opportunity.

II. Data

OMB Control Number: 1024–0233.

Title: National Park Service Leasing Program, 36 CFR 18.

Service Form Number(s): None.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Individuals and businesses.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of annual responses	Completion time per response (hours)	Total annual burden hours
Proposals, Bids, Qualifications:				
Complex	10	10	40	400
Simple	10	10	8	80
Requests to Sublet/Assign Lease:				
Complex	1	1	40	40
Simple	4	4	8	32
Construction/Demolition Requests:				
Complex	2	2	32	64
Simple	1	1	12	12
Amendments	2	2	4	8
Encumbrance Requests:				
Complex	2	2	40	80
Simple	2	2	8	16
TOTALS	34	34	.....	732

Estimated Annual Nonhour Burden Cost: None.

III. Comments

On October 22, 2013, we published in the **Federal Register** (78 FR 62658) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on December 23, 2013. We received no comments in response to this notice.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: February 24, 2014.

Ramie Lynch,

Acting, Information Collection Clearance Officer, National Park Service.

[FR Doc. 2014–04342 Filed 2–26–14; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–15025; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 8, 2014. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 14, 2014. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 11, 2014.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

INDIANA

Boone County

Oak Hill Cemetery, 935 E. Washington St., Lebanon, 14000068

De Kalb County

Auburn Community Mausoleum, (Early Community Mausoleum Movement in Indiana MPS) 1431 Center St., Auburn, 14000069

Butler Community Mausoleum, (Early Community Mausoleum Movement in Indiana MPS) Cty. Rd. 28 E., Butler, 14000070

Garrett Community Mausoleum, (Early Community Mausoleum Movement in Indiana MPS) S. Hamsher St., Garrett, 14000071

Waterloo Community Mausoleum, (Early Community Mausoleum Movement in Indiana MPS) N. Center St., Waterloo, 14000072

Lake County

Eskilson Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Roughly bounded by W. 3rd Ave. & alleys between Garfield & Hayes Sts., W. 4th Pl. & W. 5th Ave, Cleveland & McKinley Sts., Gary, 14000073

Material Service, Address Restricted, Whiting, 14000074

Monroe County

Koontz, John F. and Malissa, House, 7401 S. Mount Zion Rd., Bloomington, 14000075

Millen—Chase—McCalla House, 403 N. Walnut St., Bloomington, 14000076

St. Joseph County

North Liberty Historic District, IN 23 between Center & Harrison Sts., North Liberty, 14000077

MONTANA

Carbon County

Yodeler Motel, 601 S. Broadway Ave., Red Lodge, 14000078

Fallon County

Cottonwood Creek Bridge, (Montana's Historic Timber Stringer Bridges, 1915–1960 MPS) Mi. 2.2 Ismay Rd., Ismay, 14000079

Lewis and Clark County

Haight—Bridgwater House, 502 Peosta, Helena, 14000080

NEW HAMPSHIRE

Strafford County

Cocheco Mills, Main & Washington Sts., Dover, 14000081

OHIO

Montgomery County

Linden Community and Recreation Center, 334 Norwood Ave., Dayton, 14000082

TENNESSEE

Bradley County

Card, C.C., Auto Company Building, 125 Inman & 162 1st Sts., Cleveland, 14000083

Davidson County

Tennessee Supreme Court Building, 401 7th Ave., N., Nashville, 14000084

Knox County

Mead Marble Quarry, (Marble Industry of East Tennessee, ca. 1838–1963 MPS) 2915 Island Home Ave., Knoxville, 14000085

Ross Marble Quarry, (Marble Industry of East Tennessee, ca. 1838–1963 MPS) 2915 Island Home Ave., Knoxville, 14000086

Sullivan County

Blountville Historic District (Boundary Increase, Decrease), Roughly bounded by Blountville Cemetery, Great Stage & Massengill Rds., Blountville Bypass., Blountville, 14000087

Martin—Dobyns House, 1434 Watauga St., Kingsport, 14000088

A request for removal has been made for the following resources:

INDIANA

Delaware County

Valentine, John, House, 1101 Riverside Ave., Muncie, 83000026

Perry County

Hall of Tell City Lodge, No. 206, IOOF, 701 Main St., Tell City, 92001654

[FR Doc. 2014–04238 Filed 2–26–14; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Central Gulf of Mexico Planning Area (CPA) Outer Continental Shelf (OCS) Oil and Gas Lease Sale 231 (CPA Sale 231); Correction

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

ACTION: Notice; correction.

SUMMARY: On February 14, 2014, BOEM published in the **Federal Register** the Final Notice of Sale (FNOS) for CPA Sale 231. The FNOS refers to a document entitled ''List of Blocks Available for Leasing.'' The referenced list was included in the FNOS Package, and the FNOS Package was made available at the BOEM address and Web site set forth in the FNOS. The list identifies blocks to be offered in CPA Sale 231; however, due to a clerical error, four blocks, Eugene Island Area, Block Number 107, Eugene Island Area, Block Number 222, Eugene Island Area, Block Number 223 and South Marsh Island Area, South Addition, Block Number 144, were inadvertently omitted from the list.

FOR FURTHER INFORMATION CONTACT: Robert Samuels, Leasing Division Chief, *robert.samuels@boem.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 14, 2014, in FR Doc. 2014–03316, (79 FR 8993), on page 8993, the document entitled ''List of Blocks Available for Leasing'' is referenced. This document has been corrected to include the information below, which has been inserted between the entries ''Eugene Island Area, Block Number 106'' and ''Eugene Island Area, Block Number 109,'' ''Eugene Island Area, Block Number 221'' and ''Eugene Island Area, Block Number 225,'' and ''South Marsh Island Area, South Addition, Block Number 143'' and ''South Marsh Island Area, South Addition, Block Number 145.''

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Y

Map/Official Protraction Diagram (OPD) Name

Eugene Island Area
Eugene Island Area
Eugene Island Area
South Marsh Island Area, South Addition

Map/OPD Number

LA4
LA4
LA4
LA3C

Block Number

107
222
223
144

A/P

A
A
A
A

Available Federal Acreage

5,000.000000
5,000.010000
5,000.020000
5,000.000000

Minimum Bid Per Acre

$25.00
$25.00
$25.00
$25.00

Lease Term

5
5
5
5

Minimum Bid Per Block

$125,000
$125,025
$125,025
$125,000

Rent Per Acre

$7.00
$7.00
$7.00
$7.00

Bid System

RS20
RS20
RS20
RS20

Stipulation(s)

3, 8
3, 8
3, 8
3, 8

The corrected ''List of Blocks Available for Leasing'' is available at the BOEM address and Web site set forth in the FNOS.

Dated: February 24, 2014.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2014–04346 Filed 2–26–14; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1123 (Review)]

Steel Wire Garment Hangers From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. §1675(c)), that revocation of the antidumping duty order on steel wire garment hangers from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on September 3, 2013 (78 FR 54272) and determined on December 20, 2013, that it would conduct an expedited review (79 FR 1885, January 10, 1014).

The Commission completed and filed its determination in this review on February 20, 2014. The views of the Commission are contained in USITC Publication 4453 (February 2014), entitled *Steel Wire Garment Hangers From China: Investigation No. 731–TA–1123 (Review).*

By order of the Commission.

Issued: February 21, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–04289 Filed 2–26–14; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR §207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1210–1212 (Final)]

Welded Stainless Steel Pressure Pipe From Malaysia, Thailand, and Vietnam; Scheduling of the Final Phase of an Antidumping Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731–TA–1210–1212 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Malaysia, Thailand, and Vietnam of welded stainless steel pressure pipe, provided for in in subheadings 7306.40.50 and 7306.40.10 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. For purposes of these investigations, references to size are in nominal inches and include all products within tolerances allowed by pipe specifications. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. ASTM A–358 products are only included when they are produced to meet ASTM A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. Excluded from the scope are: (1) Welded stainless mechanical tubing, meeting ASTM A–554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A–249, ASTM A–688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A269, ASTM A–270 or comparable domestic or foreign specifications. The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of these investigations is dispositive.

DATES: *Effective Date:* February 21, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or *fred.ruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of welded stainless steel pressure pipe from Malaysia, Thailand, and Vietnam are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on May 16, 2013, by Bristol Metals, L.P., of Bristol, TN; Felker Brothers Corp., of Marshfield, WI; and Outokumpu Stainless Pipe, Inc., of Schaumberg, IL.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these

investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 13, 2014, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 22, 2014, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 12, 2014. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 20, 2014, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 12, 2014. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 30, 2014. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before May 30, 2014. On June 18, 2014, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 20, 2014, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 24, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–04303 Filed 2–26–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0034]

Proposed Information Collection; Records of Tests and Examinations of Mine Personnel Hoisting Equipment

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Records of Tests and Examinations of Mine Personnel Hoisting Equipment.

DATES: All comments must be received on or before April 28, 2014.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments for docket number [MSHA–2013–0044].
- *Regular Mail:* Send comments to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.
- *Hand Delivery:* MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813, authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners.

Under Title 30 of the Code of Federal Regulations (CFR), MSHA has requirements that address hoists and appurtenances, including wire rope, used for hoisting persons. The requirements address both metal and nonmetal surface and underground

mines (30 CFR parts 56 and 57); and underground coal and surface work areas of underground coal mines (30 CFR parts 75 and 77).

Title 30 CFR 56/57.19022 and 30 CFR 75/77.1432 requires the diameter of newly installed wire rope to be measured at least once in every third interval of the rope's active length to establish a baseline for subsequent semiannual measurements. A record of the measurements is required to be made and retained until the rope is retired from service.

Title 30 CFR 56/57.19023 and 30 CFR 75/77.1433 require the wire rope to be visually examined at least every fourteen days for visible structural damage, corrosion, and improper lubrication or dressing. If the examination reveals weakening portions of the rope, the weakened portions must be monitored daily for further deterioration until retirement criteria require that the rope be removed from service. The person conducting the examination must certify that the examination was made and the record must be retained for one year.

Title 30 CFR 56/57.19121 requires the person conducting the inspection, test or examination of hoisting equipment certify that these activities have been done. Any unsafe conditions must be noted in a record and dated. All certifications and records must be retained for one year.

Title 30 CFR 75.1400–2 requires a record to be made of tests conducted on safety catches. Safety catches are the last means to safely stop a falling conveyance in the event of rope or equipment failure.

Title 30 CFR 75.1400–4 and 77.1404 require a record to be made of each daily examination. If any unsafe condition is found during the examination, the person conducting the examination must make a record of the condition. All certifications and records must be retained for one year.

Title 30 CFR 77.1906 requires a daily examination of hoists used for shaft sinking. If any unsafe condition is found during the examination, the person conducting the examination must make a record of the condition. All certifications and records must be retained for one year.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Records of Tests and Examinations of Mine Personnel Hoisting Equipment. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

This information collection request is available on *http://www.msha.gov/regs/fedreg/informationcollection/informationcollection.asp.* The information collection request will be available on MSHA's Web site and on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Records of Tests and Examinations of Mine Personnel Hoisting Equipment. MSHA has updated the data in respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0034.

Affected Public: Business or other for-profit.

Number of Respondents: 250.

Frequency: On occasion.

Number of Responses: 74,715.

Annual Burden Hours: 5,989 hours.

Annual Respondent or Recordkeeper Cost: $300,000.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 21, 2014.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2014–04249 Filed 2–26–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0048]

Proposed Information Collection; Respirator Program Records

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Respirator Program Records.

DATES: All comments must be received on or before April 28, 2014.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments for docket number [MSHA–2013–0046].
- *Regular Mail:* Send comments to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.
- *Hand Delivery:* MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(a), 30 U.S.C. 811(a), allows MSHA to promulgate standards that would require operators to make and retain records from which MSHA would then be allowed to collect information. Section 103(h), 30 U.S.C. 813(h), of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 et seq., authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners.

Title 30 CFR 56.5005 and 57.5005 require, whenever respiratory equipment is used, that metal and nonmetal mine operators institute a respirator program governing selection, maintenance, training, fitting, supervision, cleaning, and use of respirators. These standards seek to control miner exposure to harmful airborne contaminants by using engineering controls to prevent contamination and vent or dilute the contaminated air. However, where accepted engineering control measures have not been developed or when necessary by the nature of work involved (for example, while establishing controls or occasional entry into hazardous atmospheres to perform maintenance or investigation), employees may work for reasonable periods of time in concentrations of airborne contaminants exceeding permissible levels if they are protected by appropriate respiratory protective equipment.

Sections 56.5005 and 57.5005 incorporate by reference, requirements of the American National Standards Institute's Practices for Respiratory Protection (ANSI Z88.2–1969). These incorporated requirements mandate that miners who must wear respirators be fit-tested to the respirators that they will use. Certain records are also required to be kept in connection with respirators, including: Written standard operating procedures governing the selection and use of respirators; records of the date of issuance of the respirator; and fit-test results.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Respirator Program Records. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

This information collection request is available on *http://www.msha.gov/regs/fedreg/informationcollection/informationcollection.asp.* The information collection request will be available on MSHA's Web site and on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Respirator Program Records. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0048.

Affected Public: Business or other for-profit.

Number of Respondents: 300.

Frequency: On occasion.

Number of Responses: 5,400.

Annual Burden Hours: 3,074 hours.

Annual Respondent or Recordkeeper Cost: $90,000.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 21, 2014.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2014–04251 Filed 2–26–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0046]

Proposed Information Collection; Escape and Evacuation Plans (Pertains to Underground Metal and Nonmetal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on Escape and Evacuation Plans, 30 CFR 57.11053.

DATES: All comments must be submitted on or before April 28, 2014.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments for docket number [MSHA–2013–0045].
- *Regular Mail:* Send comments to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.

• *Hand Delivery:* MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813, authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners.

Title 30 of the Code of Federal Regulations (30 CFR) 57.11053 requires the development of an escape and evacuation plan specifically addressing the unique conditions of each underground metal and nonmetal mine. Section 57.11053 also requires that revisions be made as mining progresses. The plan must be available to representatives of the Mine Safety and Health Administration (MSHA) and conspicuously posted at locations convenient to all persons on the surface and underground. The mine operator and MSHA are required to jointly review the plan at least once every six months.

The following information is required with each escape and evacuation plan submission:

(1) Mine maps or diagrams showing directions of principal air flow, location of escape routes, and locations of existing telephones, primary fans, primary fan controls, fire doors, ventilation doors, and refuge chambers;

(2) Procedures to show how the miners will be notified of an emergency;

(3) An escape plan for each working area in the mine, including instructions showing how each working area should be evacuated;

(4) A firefighting plan;

(5) Surface procedures to be followed in an emergency, including the notification of proper authorities and the preparation of rescue equipment and other equipment which may be used in rescue and recovery operations; and

(6) A statement of the availability of emergency communication and transportation facilities, emergency power, and ventilation, and the location of rescue personnel and equipment.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Escape and Evacuation Plans, 30 CFR 57.11053. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

• Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to 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.

This information collection request is available on *http://www.msha.gov/regs/fedreg/informationcollection/informationcollection.asp.* The information collection request will be available on MSHA's Web site and on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Escape and Evacuation Plans, 30 CFR 57.11053. MSHA has updated the data in respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0046.

Affected Public: Business or other for-profit.

Number of Respondents: 251.

Frequency: On occasion.

Number of Responses: 502.

Annual Burden Hours: 4,267 hours.

Annual Respondent or Recordkeeper Cost: $2,510.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 21, 2014.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2014–04250 Filed 2–26–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0049]

Proposed Information Collection; Hoist Operators' Physical Fitness

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Hoist Operators' Physical Fitness.

DATES: All comments must be received on or before April 28, 2014.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments for docket number [MSHA–2013–0047].

• *Regular Mail:* Send comments to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939

• *Hand Delivery:* MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Sections 101(a) and 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811(a) and 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Title 30 CFR 56.19057 and 57.19057 require the examination and certification of hoist operators' fitness by a qualified, licensed physician, within twelve months preceding hoisting duties. The safety of all metal and nonmetal miners riding hoist conveyances is largely dependent upon the attentiveness and physical capabilities of the hoist operator. Improper movements, overspeed, and overtravel of a hoisting conveyance can result in serious physical harm or death to all passengers.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Hoist Operators' Physical Fitness. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

• Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to 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.

This information collection request is available on *http://www.msha.gov/regs/fedreg/informationcollection/informationcollection.asp.* The information collection request will be available on MSHA's Web site and on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Hoist Operators' Physical Fitness. MSHA has updated the data in respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0049.

Affected Public: Business or other for-profit.

Number of Respondents: 75.

Frequency: On occasion.

Number of Responses: 375.

Annual Burden Hours: 13 hours.

Annual Respondent or Recordkeeper Cost: $187,500.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 21, 2014.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2014–04252 Filed 2–26–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0097]

Proposed Information Collection; Rock Burst Control Plan, (Pertains to Underground Metal/Nonmetal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Rock Burst Control Plan, 30 CFR 57.3461 (Pertains to Underground Metal/Nonmetal Mines).

DATES: All comments must be received on or before April 28, 2014.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments for docket number [MSHA–2013–0048].

• *Regular Mail:* Send comments to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.

• *Hand Delivery:* MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(a), 30 U.S.C. 811(a), allows MSHA to promulgate standards that would require operators to make and retain records from which MSHA would then be allowed to collect information. Section 103(h), 30 U.S.C. 813(h), of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 et seq., authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners.

Title 30 CFR 57.3461 requires operators of underground metal and

nonmetal mines to develop and implement a rock burst control plan within 90 days after a rock burst has been experienced. Plans are required to include: Mining and operating procedures designed to reduce the occurrence of rock bursts; monitoring procedures where detection methods are used; and other measures to minimize exposure of persons to areas prone to rock bursts. Plans are also required to be updated as conditions warrant and are to be made available to MSHA inspectors and to miners or their representatives. The standard does not require that all underground metal and nonmetal mines develop these preventative measures, but it does require that all mines with a rock burst history develop and implement a rock burst control plan.

When rock bursts occur in an underground mine, they pose a serious threat to the safety of miners in the area affected by the burst. These bursts may reasonably be expected to result in the entrapment of miners, death, and serious physical harm. Recent mining technology has disclosed scientific methods of monitoring rock stresses which will allow for the prediction of an oncoming burst. These predictions can be used by the mine operator to move miners to safer locations and to establish areas which need relief drilling.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Rock Burst Control Plan, 30 CFR 57.3461 (Pertains to Underground Metal/Nonmetal Mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

This information collection request is available on *http://www.msha.gov/regs/fedreg/informationcollection/informationcollection.asp.* The information collection request will be available on MSHA's Web site and on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Rock Burst Control Plan, 30 CFR 57.3461 (Pertains to Underground Metal/Nonmetal Mines). MSHA has updated the data in respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0097.

Affected Public: Business or other for-profit.

Number of Respondents: 2.

Frequency: On occasion.

Number of Responses: 2.

Annual Burden Hours: 24 hours.

Annual Respondent or Recordkeeper Cost: None.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 21, 2014.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2014–04253 Filed 2–26–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0009]

Proposed Information Collection; Training Plans and Records of Training, for Underground Miners and Miners Working at Surface Mines and Surface Areas of Underground Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Training Plans and Records of Training, for Underground Miners and Miners Working at Surface Mines and Surface Areas of Underground Mines.

DATES: All comments must be received on or before April 28, 2014.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments for docket number [MSHA–2013–0043].
- *Regular Mail:* Send comments to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.
- *Hand Delivery:* MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, Section 101(a) of the Mine Act, 30 U.S.C. 811 authorizes the Secretary to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

The Mine Act, as amended, 30 U.S.C. 801 et seq., recognizes that education and training in the improvement of miner health and safety is an important element of federal efforts to make the nation's mines safe. Section 115(a) of the Mine Act states that ''each operator of a coal or other mine shall have a health and safety training program which shall be approved by the Secretary.'' Title 30 CFR 48.3 and 48.23 require training plans for underground and surface mines, respectively. The standards are intended to assure that miners will be effectively trained in matters affecting their health and safety, with the ultimate goal of reducing the occurrence of injury and illness in the nation's mines.

Training plans are required to be submitted for approval to the MSHA District Manager for the area in which the mine is located. Plans must contain the following: (1) Company name, (2) mine name, (3) MSHA identification number of the mine, (4) the name and position of the person designated by the operator who is responsible for health and safety training at the mine, (5) a list of MSHA-approved instructors with whom the operator proposes to make arrangements to teach the courses and the courses each instructor is qualified to teach, (6) the location where training will be given for each course, (7) a description of the teaching methods and the course materials which are to be used in training, (8) the approximate number of miners employed at the mine and the maximum number who will attend each session of training, (9) the predicted time or periods of time when regularly scheduled refresher training will be given including the titles of courses to be taught, (10) the total number of instruction hours for each course, and (11) the predicted time and length of each session of training for new task training including a complete list of task assignments, the titles of personnel conducting the training, the outline of training procedures used, and the evaluation procedures used to determine the effectiveness of the training.

Title 30 CFR 48.9 and 48.29 require records of training for underground and surface mines, respectively. Upon completion of each training program, the mine operator certifies on a form approved by the Secretary (MSHA Form 5000–23) that the miner has received the specified training in each subject area of the approved health and safety training plan.

The certificates are to be maintained by the operator for a period of two years for current employees and sixty days for terminated employees and must be available for inspection at the mine site. In addition, the miner is entitled to a copy of the certificate upon completion of the training and when he/she leaves the operator's employment.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Training Plans and Records of Training, for Underground Miners and Miners Working at Surface Mines and Surface Areas of Underground Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

This information collection request is available on *http://www.msha.gov/regs/fedreg/informationcollection/informationcollection.asp*. The information collection request will be available on MSHA's Web site and on *http://www.regulations.gov*. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov*.

The public may also examine publicly available documents at MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Training Plans and Records of Training, for Underground Miners and Miners Working at Surface Mines and Surface Areas of Underground Mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0009.

Affected Public: Business or other for-profit.

Number of Respondents: 2,399.

Frequency: On occasion.

Number of Responses: 143,263.

Annual Burden Hours: 17,741 hours.

Annual Respondent or Recordkeeper Cost: $465,617.

MSHA Forms: MSHA Form 5000–23, Certificate of Training.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 21, 2014.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2014–04248 Filed 2–26–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0007]

Proposed Information Collection; Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report (MSHA Forms 7000–1 and 7000–2)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation

program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report (MSHA Forms 7000–1 and 7000–2), 30 CFR 50.10, 50.11, 50.20, 50.30.

DATES: All comments must be received on or before April 28, 2014.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments for docket number [MSHA–2013–0042].
- *Regular Mail:* Send comments to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.
- *Hand Delivery:* MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, Section 101(a) of the Mine Act, 30 U.S.C. 811 authorizes the Secretary to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

The reporting and recordkeeping provisions in 30 CFR part 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in MSHA's Congressional mandate to reduce work-related injuries and illnesses among the nation's miners.

Section 50.10 requires mine operators and independent contractors to immediately notify MSHA in the event of an accident. This immediate notification is critical to MSHA's timely investigation and assessment of the cause of the accident.

Section 50.11 requires that the mine operator or independent contractor investigate each accident and occupational injury and prepare a report. The mine operator or independent contractor may not use MSHA Form 7000–1 as the investigation report, except if the operator or contractor employs fewer than 20 miners and the injury is not related to an accident.

Section 50.20 requires mine operators and independent contractors to report each accident, injury, and illness to MSHA on Form 7000–1 within 10 working days after an accident or injury has occurred or an occupational illness has been diagnosed. The use of MSHA Form 7000–1 provides for uniform information gathering across the mining industry.

Section 50.30 requires that all mine operators and independent contractors working on mine property report employment to MSHA quarterly on Form 7000–2, and that coal mine operators and independent contractors also report coal production.

Accident, injury, and illness data, when correlated with employment and production data, provide information that allows MSHA to improve its safety and health enforcement programs, focus its education and training efforts, and establish priorities for its technical assistance activities in mine safety and health. Maintaining a current database allows MSHA to identify and direct increased attention to those mines, industry segments, and geographical areas where hazardous trends are developing. This could not be done effectively using historical data. The information collected under Part 50 is the most comprehensive and reliable occupational data available concerning the mining industry.

Section 103(d) of the Federal Mine Safety and Health Act of 1977 (Mine Act) mandates that each accident be investigated by the operator to determine the cause and means of preventing a recurrence. Records of such accidents and investigations must be kept and made available to the Secretary or his authorized representative and the appropriate State agency. Section 103(h) requires operators to keep any records and make any reports that are reasonably necessary for MSHA to perform its duties under the Mine Act. Section 103(j) requires operators to notify MSHA of the occurrence of an accident and to take appropriate measures to preserve any evidence that would assist in the investigation into the causes of the accident.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report (MSHA Forms 7000–1 and 7000–2), 30 CFR 50.10, 50.11, 50.20, 50.30. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

This information collection request is available on *http://www.msha.gov/regs/fedreg/informationcollection/informationcollection.asp*. The information collection request will be available on MSHA's Web site and on *http://www.regulations.gov*. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov*.

The public may also examine publicly available documents at MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA. Sign in at the receptionist's desk on the 21st floor.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report (MSHA Forms 7000–1 and 7000–2) 30 CFR 50.10, 50.11, 50.20, 50.30. MSHA has updated the data in respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0007.

Affected Public: Business or other for-profit.

Number of Respondents: 29,910.

Frequency: On occasion.

Number of Responses: 132,179.

Annual Burden Hours: 180,535 hours.

Annual Respondent or Recordkeeper Cost: $5,706.

MSHA Forms: MSHA Form 7000–1, Mine Accident, Injury and Illness Report; MSHA Form 7000–2, Quarterly Mine Employment and Coal Mine Production Report.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 21, 2014.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2014–04247 Filed 2–26–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This **Federal Register** Notice notifies the public that MSHA has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web site at *http://www.msha.gov/indexes/petition.htm* The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign-in.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Office of Standards, Regulations and Variances at 202–693–9475 (Voice), *fontaine.roslyn@dol.gov* (Email), or 202–693–9441 (Telefax), or Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

• *Docket Number:* M–2012–002–C.
FR Notice: 77 FR 14427 (3/9/2012).
Petitioner: Wolf Run Mining Company, 99 Edmiston Way, Buckhannon, West Virginia 26201.
Mine: Sentinel Mine, MSHA Mine I.D. No. 46–04168, located in Barbour County, West Virginia.
Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2012–031–C.
FR Notice: 77 FR 19723 (4/2/2012).
Petitioner: White Oak Resources, LLC, 121 S. Jackson Street, P.O. Box 339, McLeansboro, Illinois 62859.
Mine: White Oak Mine No. 1, MSHA I.D. No. 11–03203, located in Hamilton County, Illinois.
Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

• *Docket Number:* M–2012–062–C.
FR Notice: 77 FR 27086 (5/8/2012).
Petitioner: Signal Peak Energy, LLC, 100 Portal Drive, Roundup, Montana 59072.
Mine: Bull Mountain Mine No. 1, MSHA I.D. No. 24–01950, located in Musselshell County, Montana.
Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

• *Docket Number:* M–2012–063–C.
FR Notice: 77 FR 27087 (5/8/2012).
Petitioner: Sebree Mining, LLC, 2668 State Route 120E, Providence, Kentucky 42450.
Mine: Sebree Mine #1, MSHA I.D. No. 15–19264, located in Webster County, Kentucky.
Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2012–072–C.
FR Notice: 77 FR 27094 (5/8/2012)
Petitioner: Consolidation Coal Company, 1000 CONSOL Energy Drive, Canonsburg, Pennsylvania 15317–6506.
Mine: Loveridge #22 Mine, MSHA I.D. No. 46–01433, located in Marion County, West Virginia.
Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable trailing cables and cords).

• *Docket Number:* M–2012–081–C.
FR Notice: 77 FR 37927 (6/25/2012).
Petitioner: White Oaks Resources, LLC, 121 S. Jackson Street, McLeansboro, Illinois 62859.
Mine: White Oak Mine No. 1, MSHA Mine I.D. No. 11–03203, located in Hamilton County, Illinois.
Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

• *Docket Number:* M–2012–082–C.
FR Notice: 77 FR 37927 (6/25/2012).
Petitioner: White Oak Resources, LLC, 121 S. Jackson Street, McLeansboro, Illinois 62859.
Mine: White Oak Mine No. 1, MSHA I.D. No. 11–03203, located in Hamilton County, Illinois.
Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

• *Docket Number:* M–2013–002–C.
FR Notice: 78 FR 11231 (2/15/2013).
Petitioner: Wheels Coal Company, 59 Main Street, Tremont, Pennsylvania 17981.
Mine: No. 5 Vein Mine, MSHA I.D. No. 36–08679, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1200(d) & (i) (Mine map).

• *Docket Number:* M–2013–017–C.
FR Notice: 78 FR 23309 (4/18/2013).
Petitioner: Highland Mining Company, LLC, 12312 Olive Boulevard, Suite 425, St. Louis, Missouri 63141.
Mine: Highland 9 Mine, MSHA I.D. No. 15–02709, located in Union County, Kentucky.
Regulation Affected: 30 CFR 75.1100–3 (Condition and examination of firefighting equipment).

• *Docket Number:* M–2013–018–C.
FR Notice: 78 FR 23310 (4/18/2013).
Petitioner: Gibson County Coal, LLC, P.O. Box 1269, Princeton, Indiana 47670.
Mine: Gibson North Mine, MSHA I.D. No. 12–02215, located in Gibson County, Indiana.
Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable trailing cables and cords).

• *Docket Number:* M–2013–020–C.
FR Notice: 78 FR 29385 (5/20/2013).
Petitioner: Liberty Fuels Company, LLC, 4707 Highway 493, DeKalb, Mississippi 39328.
Mine: Liberty Mine, MSHA I.D. No. 22–00803, located in Kemper County, Mississippi.
Regulation Affected: 30 CFR 77.803 (Fail safe ground check circuits on high-voltage resistance grounded systems).

• *Docket Number:* M–2013–021–C.
FR Notice: 78 FR 35977 (6/14/2013).
Petitioner: Peabody Energy Company, 115 Grayson Lane, Eldorado, Illinois 62930.
Mine: Wildcat Hills Underground Mine, MSHA I.D. No. 11–03156, located in Saline County, Illinois.
Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

• *Docket Number:* M–2013–023–C.
FR Notice: 78 FR 35979 (6/14/2013).
Petitioner: San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421.
Mine: San Juan Mine 1, MSHA I.D. No. 29–02170, located in San Juan County, New Mexico.
Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable trailing cables and cords).

• *Docket Number:* M–2013–028–C.
FR Notice: 78 FR 36602 (6/18/2013).
Petitioner: Brody Mining, LLC, 33207 Pond Fork Rd., Wharton, West Virginia 25208.
Mine: Brody Mine No. 1, MSHA I.D. No. 46–09086, located in Boone County, West Virginia.
Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

• *Docket Number:* M–2013–031–C.
FR Notice: 78 FR 49777 (8/15/2013).
Petitioner: Oak Grove Resources, LLC, 8360 Taylor's Ferry Road, Hueytown, Alabama 35023.
Mine: Oak Grove Mine, MSHA I.D. No. 01–00851, located in Jefferson County, Alabama.
Regulation Affected: 30 CFR 75.507 (Power connection points).

Dated: February 21, 2014.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2014–04245 Filed 2–26–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before March 31, 2014.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2014–001–C.
Petitioner: CONSOL Buchanan Mining Company, 1000 CONSOL Energy Drive, Canonsburg, Pennsylvania 15317–6506.
Mine: Buchanan Mine #1 Mine, MSHA I.D. No. 44–04856, located in Buchanan County, Virginia.
Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance), (18.35(a)(5)(i) (Portable (trailing) cables and cords)).
Modification Request: The petitioner requests a modification of the existing standard to permit maximum length of trailing cables to be increased to 1,000 feet for supplying power to mining machines, section ventilation fans and roof bolters. The petitioner states that:

(1) This petition will apply only to trailing cables supplying three-phase, 995-volt power to mining machines and trailing cables supplying three-phase, 575-volt power to roof bolters and section ventilation fans.

(2) The maximum lengths of the 995-volt trailing cables and 575-volt trailing cables will be 1,000 feet.

(3) The 995-volt mining machine trailing cables will not be smaller than

2.0. The 575-volt trailing cables for section ventilation fans will not be smaller than No. 1 American Wire Gauge (AWG). The 575-volt trailing cables for roof bolters will not be smaller than No. 2 AWG.

(4) All circuit breakers used to protect the 2.0 trailing cables exceeding 850 feet in length will have instantaneous trip units calibrated to trip at 1,500 amperes. The trip setting of these circuit breakers will be sealed or locked, and these circuit breakers will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting 2.0 cables. This label will be maintained legible.

(5) Replacement instantaneous trip units, used to protect 2.0 trailing cables will be calibrated to trip at 1,500 amperes and this setting will be sealed or locked.

(6) All circuits breaker used to protect No. 1 AWG trailing cables exceeding 750 feet in length will have instantaneous trip units calibrated to trip at 1,000 amperes. The trip setting of these circuit breakers will be sealed or locked, will have permanent legible labels. Each label will identify the circuit breaker being suitable for protecting No. 1 AWG cables. This label will be maintained legible.

(7) Replacement instantaneous trip units used to protect No. 1 AWG trailing cables will be calibrated to trip at 1,000 amperes and this setting will be sealed or locked.

(8) All circuits used to protect #2 AWG trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 800 amperes. The trip setting of these circuit breakers will be sealed or locked and will have permanent legible labels. Each label will identify the circuit breaker as being suitable for protecting No. 2 AWG cables. This label will be maintained legible.

(9) Replacement instantaneous trip units used to protect No. 2 AWG trailing cables will be calibrated to trip at 800 amperes and this setting will be sealed or locked.

(10) During each production day, persons designated by the operator will visually examine the trailing cables to ensure that the cables are in safe operating condition and that the instantaneous settings of the specially calibrated breakers do not have seals or locks removed and that they do not exceed the stipulated settings.

(11) Any trailing cable that is not in safe operating conditions will be removed from service immediately and repaired or replaced.

(12) Each splice or repair in the trailing cable will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials. The outer jacket of each splice or repair will be vulcanized with flame-resistant material or made with material that has been accepted by MSHA as flame-resistant.

(13) In the event the mining methods or operating procedures cause or contribute to the damage of any trailing cable, the cable will be removed from service immediately and repaired or replaced. Additional precautions will be taken to ensure that in the future, the cable is protected and maintained in safe operating condition.

(14) Permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed or locked short-circuit protection device. These labels will warn miners not to change or alter these short-circuit settings.

(15) The petitioner's alternative method will not be implemented until all miners who have been designated to examine the integrity of the seals or locks, and to verify the short-circuit settings and proper procedures for examining trailing cables for defects and damage, have received the elements of training specified in Item No. 16.

(16) Within 60 days after this proposed decision and order becomes final, the proposed revisions for the petitioner's approved 30 CFR part 48 training plan will be submitted to the District Manager. The training plan will include the following:

(i) The mining methods and operating procedures that will protect the trailing cables against damage;

(ii) The proper procedures for examining the trailing cables to ensure that the cables are in safe operating condition;

(iii) The hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables; and

(iv) How to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained.

The petitioner further states that procedures specified in 30 CFR 48.3 for proposed revisions to approved training plans will apply.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection for all miners afforded by the existing standard.

Docket Number: M–2014–002–C.

Petitioner: Consol Pennsylvania Coal Company, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

Mine: BMX Mine, MSHA I.D. No. 36–10045, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible

surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2014–003–C.

Petitioner: Consol Pennsylvania Coal Company, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

Mine: BMX Mine, MSHA I.D. No. 36–10045, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining, by its nature and size and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2014–004–C.

Petitioner: Consol Pennsylvania Coal Company, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

Mine: BMX Mine, MSHA I.D. No. 36–10045, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment within 150 feet of longwall faces and pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372, 75.1002(a), and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment may be used. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces will be examined prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2014–001–M.

Petitioner: DMC Mining Services, 488 East 6400 South, Suite 250, Murray, Utah 84107.

Mine: Tata Chemicals Mine, MSHA I.D. No. 48–00155, 324 Allied Chemical Road, Green River, Wyoming 82935, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.22606(a) & (c) (Explosive Materials and blasting units (III mines)).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of nonpermissible detonators to detonate explosives in the blast hole during work at the construction of the Tata Chemicals Number 7 Ventilation Shaft.

The petitioner states that:

(1) The construction will be for a 20-foot finished diameter ventilation shaft that will be constructed in two phases. Phase one will include the use of a raise boring drill to complete an 8-foot diameter raise. This raise will remain intact during both phases of the project for ventilation and material handling. Phase two will consist of sinking through the shaft by slashing to 22 feet in diameter and installing a concrete liner to a final diameter of 20 feet.

(2) The geological ground conditions in the Green River basin are highly conductive and interfere with permissible electric detonators. The ground inhibits the ability to safely conduct electricity to detonate a blast round. The resultant potential for misfires and partial round detonation introduces a safety risk to workers and the mine.

(3) To mitigate the risk, only blasting detonators will be nonpermissible, explosives will be permissible, and rounds will be in either four or eight foot lifts.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure or protection afforded by the existing standard.

Docket Number: M–2014–002–M.

Petitioner: FMC Minerals, 580 Westvaco Road, Box 872, Green River, Wyoming 82935.

Mine: Westvaco Underground Trona Mine, MSHA I.D. No. 48–00152, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.22305 (Approved equipment (III Mines)).

Modification Request: The petitioner requests a modification of the existing standard to allow the use of low-voltage or battery-powered nonpermissible electronic testing and diagnostic equipment in or inby the last open crosscut in the Westvaco Underground Trona Mine. The petitioner states that:

(1) The nonpermissible low-voltage or battery-powered electronic testing equipment would be limited to laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, infrared temperature devices, signal analyzer devices, ultrasonic measuring devices, electronic component testers, infrared cameras, multi-meters and electronic megometers.

(2) All nonpermissible low-voltage or battery-powered equipment to be used in or inby the last open crosscut will be examined prior to use by a competent person as defined in 30 CFR 57.22002 to ensure the equipment is being maintained in a safe operating condition.

(3) A competent person as defined in 30 CFR 57.22002 will monitor for methane immediately before and during the use of nonpermissible low-voltage battery-operated electronic testing and diagnostic equipment in or inby the last open crosscut. All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 22227.

(4) Nonpermissible low-voltage or battery-operated testing or diagnostic equipment will not be used if methane is detected in concentrations at or above one percent. When methane is detected at such levels while the nonpermissible electronic testing and diagnostic equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut as defined in 30 CFR 57.22234.

(5) Production will cease except for the time necessary to trouble shoot under actual mining conditions.

(6) All low-voltage and battery-operated electronic and diagnostic equipment will be used in accordance with the manufacturer's recommended safe use procedures.

(7) Competent personnel engaged in the use of nonpermissible low-voltage or battery-operated testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible testing and diagnostic equipment in areas where methane could be present.

The petitioner further states that the nonpermissible equipment will be used in preventive maintenance to monitor machine condition to detect problems before failure occurs so that it can be repaired at a predetermined time and place to minimize the risk to miners. The nonpermissible equipment will also be used to diagnose equipment failures without having to move failed

equipment with other equipment outby the last open crosscut minimizing the risk to miners.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure or protection afforded by the existing standard.

Dated: February 21, 2014.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2014–04244 Filed 2–26–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before March 31, 2014.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2013–056–C.

Petitioner: Kimmel Mining, Inc., P.O. Box 8, Williamstown, Pennsylvania 17098.

Mine: Williamstown Mine #1, MSHA I.D. No. 36–09435, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of nonpermissible electronic equipment within 150 feet of pillar workings to include drags and battery locomotives. The petitioner asserts that the request is due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of mine air quality for methane will be conducted on an hourly basis during operation, with one of the gas tests results recorded in the on-shift examination record. The petitioner states that:

(1) Equipment operation will be suspended any time methane concentration at the equipment reaches 0.5 percent methane either during operation or when found during a pre-shift examination.

(2) The equipment will be operated in the working section's only intake entry (gangway), which is regularly traveled and examined.

(3) The use of drags on less than moderate pitching veins (less than 20 degree pitch) is the only practical system of mining in use.

(4) Permissible drags are not commercially available, and due in part to their small size, permissible locomotives are not commercially available.

(5) As a result of low daily production rates and full timbering support, in-rushes of methane due to massive pillar falls are unlikely to occur.

(6) Recovery of the pillars above the first miner heading is usually accomplished on the advance within 150 feet of the section intake (gangway) and the remaining minable pillars are recovered from the deepest point of penetration outby.

(7) The 5,000 cubic feet per minute of required intake air flow is measured just outby the nonpermissible equipment with the ventilating air passing over the equipment to ventilate the pillar being mined.

(8) The electrical equipment is attended during operation, and either power to the unit is deenergized at the intersection of the working gangway and intake slope or the equipment is moved to that area when production ceases, minimizing any ignition potential from the pillar recovery area.

(9) Where more than one active line of pillar breast recovery exists, the locomotive may travel to a point just outby the deepest active chute/breast (room) workings or last open crosscut in a developing set of entries.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–057–C.

Petitioner: Kimmel Mining, Inc., P.O. Box 8, Williamstown, Pennsylvania 17098.

Mine: Williamstown Mine #1, MSHA I.D. No. 36–09435, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1100–2(a) (2) (Quantity and location of firefighting equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of only portable fire extinguishers where the use of rock dust, water cars, and other water storage equipped with three 10-quart pails required by the standard is not practical. The petitioner states that:

(1) Equipping its small anthracite mine with two portable fire extinguishers near the slope bottom and an additional portable fire extinguisher

within 500 feet of the working face will provide equivalent fire protection.

(2) Anthracite coal is low in volatile matter and dust is not explosive.

(3) The working section is at or below mine pool elevation, with frequent pumping is required to de-water the work area.

(4) All up-pitch workings of moderate to steep pitch are accessed only through ladders making the carrying of water in pails impractical.

(5) Electric face equipment is nonexistent in this hand-loading anthracite mine and only air-operated equipment is used in or inby the last open crosscut.

(6) The history of underground anthracite mines shows that fires occurring in the working faces are nonexistent in recent years due to improved explosives and low volatile matter in anthracite coal.

(7) This anthracite mine produces far less than the 300 ton per shift criteria using the hand-loading method.

(8) Belt conveyor haulage is not used in this underground mine for section/main haulage, minimizing fire potential.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2013–058–C.

Petitioner: Kimmel Mining, Inc., P.O. Box 8, Williamstown, Pennsylvania 17098.

Mine: Williamstown Mine #1, MSHA I.D. No. 36–09435, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1200(d) & (i) (Mine maps).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of cross-sections in lieu of contour lines on mine maps through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope. In addition, the petitioner proposes to limit the required mapping of mine workings above and below to those present within 100 feet of the vein(s) being mined unless the veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner states that:

(1) Due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible.

(2) The use of cross-sections in lieu of contour lines has been practiced since the late 1800's and provides critical information about spacing between veins and proximity to other mine workings, which fluctuate considerably.

(3) The vast majority of current underground anthracite mining involves either second mining of remnant pillars from previous mining or the mining of veins of lower quality in proximity to inaccessible and frequently flooded abandoned mine workings that may or may not be mapped.

(4) All mapping for mines above and below is researched by the petitioner's contract engineer for the presence of interconnecting rock tunnels between veins in relation to the mine, and a hazard analysis is done when mapping indicates the presence of known or potentially flooded workings.

(5) When no rock tunnel connections are found, mine workings that exist beyond 100 feet from the mine, are recognized as presenting no hazard to the mine due to the pitch of the vein and rock separation.

(6) Additionally, the mine workings above and below are usually inactive and abandoned and, therefore, are not subject to changes during the life of the mine.

(7) Where evidence indicates prior mining was conducted on a vein above or below and research exhausts the availability of mine mapping, the vein will be considered mined and flooded and appropriate precautions will be taken through § 75.388, which addresses drilling boreholes in advance of mining, where possible.

(8) Where potential hazards exist and in-mine drilling capabilities limit penetration, surface boreholes may be used to intercept the workings and the results analyzed prior to beginning mining in the affected area.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2013–059–C.

Petitioner: Kimmel Mining, Inc., P.O. Box 8, Williamstown, Pennsylvania 17098.

Mine: Williamstown Mine #1, MSHA I.D. No. 36–09435, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1202–1(a) (Temporary notations, revisions and supplements).

Modification Request: The petitioner requests a modification of the existing standard to permit the interval of survey to be established on an annual basis from the initial survey in lieu of every 6 months as required. The petitioner proposes to continue to update the mine map by hand notations on a daily basis, and conduct subsequent surveys prior to commencing retreat mining and whenever either a drilling program under § 75.388 or a plan for mining into inaccessible areas under § 75.389 is required. The petitioner states that:

(1) The low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. In most cases annual development is frequently limited to less than 500 feet of gangway advance with associated up-pitch development.

(2) The vast majority of small anthracite mines are non-mechanized and use hand-loading mining methods.

(3) Development above the active gangway is designed to mine into the level above at designated intervals thereby maintaining sufficient control between both surveyed gangways.

(4) The available engineering/surveyor resources are limited in the anthracite coal fields and surveying on an annual basis is difficult to achieve with four individual contractors currently available.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2013–060–C.

Petitioner: Kimmel Mining, Inc., P.O. Box 8, Williamstown, Pennsylvania 17098.

Mine: Williamstown Mine #1, MSHA I.D. No. 36–09435, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

Modification Request: The petitioner seeks to permit the use of a slope conveyance (gunboat) to transport persons without safety catches or other no less effective devices but instead use an increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner states that:

(1) The haulage slope of this mine is typical of those in the anthracite region, having a relatively high angle and frequently changing pitches.

(2) A functional safety catch capable of working in slopes with knuckles and curves is not commercially available. If a makeshift device is installed, it could activate on knuckles or curves when no emergency existed. The activation of a safety catch could damage the haulage system and subject persons being transported to hazards such as being battered about within the conveyance.

(3) A safer alternative is to provide secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device. Additionally, the petitioner will use hoisting ropes having a factor of safety greater than recommended in the

American Standards Specifications for the Use of Wire Rope in Mines or at least three times greater than the strength required under § 75.1431(a).

(4) Furthermore, the slope and haulage system at this mine are essentially the same as those for which petitions granting the use of the alternative suggestion have been approved since 1973.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2013–061–C.

Petitioner: S & J Coal Mine, Inc., 15 Motter Drive, Pine Grove, Pennsylvania 17963.

Mine: Slope #2 Mine, MSHA I.D. No. 36–09963, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

Modification Request: The petitioner seeks to permit the use of a slope conveyance (gunboat) to transport persons without safety catches or other no less effective devices but instead use an increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner states that:

(1) The haulage slope of this mine is typical of those in the anthracite region, having a relatively high angle and frequently changing pitches.

(2) A functional safety catch capable of working in slopes with knuckles and curves is not commercially available. If a makeshift device is installed, it could activate on knuckles or curves when no emergency existed. The activation of a safety catch could damage the haulage system and subject persons being transported to hazards such as being battered about within the conveyance.

(3) A safer alternative is to provide secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device. Additionally, the petitioner will use hoisting ropes having a factor of safety greater than recommended in the American Standards Specifications for the Use of Wire Rope in Mines or at least three times greater than the strength required under § 75.1431(a).

(4) Furthermore, the slope and haulage system at this mine are essentially the same as those for which petitions granting the use of the alternative suggestion have been approved since 1973.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Dated: February 21, 2014.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2014–04243 Filed 2–26–14; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2014–016]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Information collection notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of two currently approved information collections. The first is an application that is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. The second is a voluntary survey of visitors to the public vaults, which is part of the National Archives Experience in Washington, DC. The information will be used to determine how the various components of the public vaults affect visitors' level of satisfaction with the public vaults and how effectively the venue communicates that records matter. The information will support adjustments in this offering that will improve the overall visitor experience. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before April 28, 2014 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (ISSD), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by these collections. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* Application and Permit for Use of Space in Presidential Library and Grounds.

OMB number: 3095–0024.

Agency form number: NA Form 16011.

Type of review: Regular.

Affected public: Private organizations.

Estimated number of respondents: 1,000.

Estimated time per response: 20 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 333 hours.

Abstract: The information collection is prescribed by 36 CFR 1280.94. The application is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. NARA uses the information to determine whether use will meet the criteria in 36 CFR 1280.94 and to schedule the date.

2. *Title:* National Archives Public Vaults Survey.

OMB number: 3095–0062 (reinstatement of previously approved information collection).

Agency form number: N/A.

Type of review: Regular.

Affected public: Individuals who visit the Public Vaults in Washington, DC.

Estimated number of respondents: 1,050.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when an individual visits the Public Vaults in Washington, DC).

Estimated total annual burden hours: 175 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires

Federal agencies to survey their customers concerning customer service. The general purpose of this voluntary data collection is to measure customer satisfaction with the Public Vaults and identify additional opportunities for improving the customers' experience.

Dated: February 19, 2014.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2014–04306 Filed 2–26–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Request Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by March 31, 2014. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7420.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2013–013) to Celia Lang on August 20, 2012. The issued permit allows the applicant to enter Ross Sea Region protected areas for the purpose of education and outreach activities.

The applicant proposes a modification to his permit to add ASPA 172 Blood Falls. This ASPA did not exist when the permit was issued. All activities would be as described in the original permit.

Location: ASPA 172 Blood Falls.

Dates: March 10, 2014 to August 31, 2017.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2014–04292 Filed 2–26–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0029]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of six amendment requests. The amendment requests are for Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Catawba Nuclear Station, Units 1 and 2; McGuire Nuclear Station, Units 1 and 2; Indian Point Nuclear Generating, Units 1, 2, and 3; Palisades Nuclear Plant; and Vermont Yankee Nuclear Power Station. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by March 31, 2014. A request for a hearing must be filed by April 28, 2014. Any potential party, as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by March 10, 2014.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0029. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–A44MP, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0029 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0029.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0029 in the subject line of your

comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final

determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would

constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket No. 50–528, 50–529, and 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: November 20, 2013, which is publicly available in ADAMS under Accession No. ML13329A036, as supplemented by letter dated November 20, 2013, portions of which are publicly available in ADAMS under Accession Nos. ML13329A700 and ML13365A207.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would modify the Palo Verde Nuclear Generating Station, Units 1, 2, and 3, moderator temperature coefficient (MTC) technical specification (TS) surveillance requirements (SR) associated with implementation of WCAP–16011–P–A, ''Startup Test Activity Reduction Program,'' February 2005, as described in Technical Specification Task Force (TSTF) change traveler TSTF–486, Revision 2, ''Revise MTC Surveillance for Startup Test Activity Reduction (STAR) Program (WCAP–16011).'' The NRC staff published a notice of opportunity for comment in the **Federal Register** on July 27, 2007 (72 FR 41360), on possible amendments adopting TSTF–486, Revision 2, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 6, 2007 (72 FR 51259). The licensee affirmed the applicability of the model NSHC determination in its application dated November 20, 2013.

Additionally, the proposed amendment would eliminate the measurement of an end-of-cycle (EOC) MTC if the beginning-of-cycle (BOC) measurements are within a given tolerance to the predicted value as described in TSTF–406, Revision 2, ''Predicting End-of-Cycle MTC and Deleting Need for End-of-Cycle MTC Verification.'' Regarding TSTF–406, Revision 2, the licensee included a proposed NSHC in the license amendment request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. Each of the two items described above is addressed individually under each of the three standards, as presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

TSTF–486

Response: No.

The proposed change generically implements MTC SR changes associated with implementation of WCAP–16011–P–A, STAR Program. WCAP–16011–P–A describes methods to reduce the time required for startup testing. The consequences of an accident after adopting TSTF–486 are no different than the consequences of an accident prior to adoption.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TSTF–406

Response: No.

A change is proposed to eliminate the measurement of end-of-cycle (EOC) moderator temperature coefficient (MTC) if the beginning-of-cycle (BOC) measurements are within a given tolerance to the predicted value. MTC is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased.

The EOC MTC value is an important assumption in determining the consequences of accidents previously evaluated. The analysis presented in the Topical Report determined that the EOC MTC will be within limits if the BOC measured MTC values are within a given tolerance of the measured values. Therefore, the EOC MTC will continue to be within limits and the consequences of accidents will continue to be as previously evaluated. Therefore, the consequences of an accident previously evaluated are not significantly increased by this change.

Based on the above, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

TSTF–486

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously analyzed.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

TSTF–406

Response: No.

A change is proposed to eliminate the measurement of EOC MTC if the BOC measurements are within a given tolerance to the predicted value. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Based on the above, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

TSTF–486

Response: No.

TSTF–486 provides the means and standardized wording for [Combustion Engineering (CE) Standard Technical Specification (STS)] plants implementing the previously approved WCAP–16011–P–A alternate MTC verification at startup. MTC is a parameter controlled in the licensee's TS, including surveillance requirements. As stated previously WCAP–16011–P–A describes methods to reduce the time required for startup testing. The changes to NUREG–1432 proposed by TSTF–486 have been reviewed for and found to be consistent with the current NUREG–1432 and WCAP–16011–P–A.

Therefore, the proposed changes are acceptable and do not involve a significant reduction in a margin of safety.

TSTF–406

Response: No.

A change is proposed to eliminate the measurement of EOC MTC if the BOC measurements are within a given tolerance to the predicted value. The Topical Report concluded that the risk of not measuring the EOC MTC is acceptably small provided that the BOC measured values are within a specific tolerance of the predicted values.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Associate General Counsel—Nuclear and Environmental, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Stop 7602, Phoenix, Arizona, 85072–2034.

NRC Branch Chief: Michael T. Markley.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina; and Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 14, 2013. A publicly available version is available in ADAMS under Accession No. ML13325B142.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise Methodology Report DPC–NE–3001–P, Revision 1, ''Multidimensional Reactor Transients and Safety Analysis Physics Parameters Methodology.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendments involving methodology report DPC–NE–3001–P, *Multidimensional Reactor Transients and Safety Analysis Physics Parameters Methodology,* support the use of revised methodologies for simulating the Updated Final Safety Analysis Report (UFSAR) Chapter 15 events characterized by multidimensional reactor transients, and for systematically confirming that reload physics parameters important to UFSAR Chapter 15 transients and accidents are bounded by values assumed in the licensing analyses. The methodology report revision will be approved by the NRC prior to implementation. The proposed amendments will have no impact upon the probability of occurrence of any design basis accident. The proposed amendments will not affect the performance of any plant equipment used to mitigate the consequences of an analyzed accident. There will be no significant impact on the source term or pathways assumed in accidents previously evaluated. No analysis assumptions will be violated and there will be no adverse effects on offsite or onsite dose as the result of an accident.

Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendments do not change the methods governing normal plant operation; nor are the methods utilized to respond to plant transients altered. In addition, the proposed methodology changes will not create the potential for any new initiating events or transients to occur in the actual physical plant.

Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed methodology revision will assure the acceptability of analytical limits under normal, transient, and accident conditions. The use of the proposed methodology revision once it has been approved by the NRC will ensure that all applicable design and safety limits are satisfied such that the fission product barriers will continue to perform their design functions.

Therefore, the proposed amendments do not involve a significant reduction in a margin of safety.

Based on the preceding discussion, Duke Energy concludes that the proposed amendments do not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, North Carolina 28202.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Nuclear Operations, Inc., Docket Nos. 50–03, 50–247, and 50–286, Indian Point Nuclear Generating, Units 1, 2, and 3, Westchester County, New York

Date of amendment request: August 20, 2013. A publicly available version is available in ADAMS under Accession No. ML13239A447.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would modify the operating license, pursuant to Section 161A of the Atomic Energy Act, to permit the licensee's security personnel to possess and use weapons, devices, ammunition, or other firearms, notwithstanding state, local, and certain federal firearms laws that may prohibit such use. The NRC refers to this authority as ''stand-alone preemption authority.'' The licensee is seeking stand-alone preemption authority for standard weapons presently in use at the Indian Point facility in accordance with the Indian Point security plans, namely semi-automatic assault rifles and extended magazines. The weapons that are the subject of this amendment request do not include enhanced weapons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an[y] accident previously evaluated?

Response: No.

The LAR [license amendment request] does not require any plant modifications, alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

The proposed change adds a sentence to the IPEC [Indian Point Energy Center] licenses to reflect the Section 161A preemption authority granted by the Commission. The change is administrative and has no impact on the probability or consequences of an[y] accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an[y] accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The LAR does not require any plant modifications, alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

The proposed change adds a sentence to the IPEC licenses to reflect the Section 161A preemption authority granted by the Commission. The change is administrative and has no impact on the possibility or [of] a new or different kind of accident from any accident previously evaluated.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The LAR does not require any plant modifications, alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety limits specified in the Technical Specifications. Because there is no change to these established safety margins, the proposed change does not involve a significant reduction in a margin of safety.

The proposed change adds a sentence to the IPEC licenses to reflect the Section 161A preemption authority granted by the Commission. The change is administrative and does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, New York 10601.

NRC Branch Chief: Benjamin G. Beasley.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant (PNP), Van Buren County, Michigan

Date of amendment request: December 12, 2012, supplemented by letters dated February 21, September 30, October 24, and December 2, 2013; the publicly-available version of each letter are available in ADAMS under Accession Nos. ML12348A455, ML13079A090, ML13273A469, ML13298A044, and ML13336A649.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would provide the NRC's approval for adoption of a new fire protection licensing basis which complies with the requirements in §§ 50.48(a) and 50.48(c); and the guidance in Regulatory Guide (RG) 1.205, Revision 1, ''Risk-Informed, Performance Based Fire Protection for Existing Light-Water Nuclear Power Plants.'' This amendment request also follows the guidance in Nuclear Energy Institute (NEI) 04–02, Revision 2, ''Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program Under 10 CFR 50.48(c).'' Upon approval, the PNP's fire protection program will transition to a new Risk-Informed, Performance-Based (RI–PB) alternative in accordance with 10 CFR 50.48(c), which incorporates by reference the National Fire Protection Association Standard 805 (NFPA 805). The NFPA 805 fire protection program will supersede the current fire protection program licensing basis in accordance with 10 CFR Part 50, Appendix R. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operation of PNP in accordance with the proposed amendment does not result in a significant increase the probability or consequences of accidents previously evaluated. The proposed amendment does not affect accident initiators or precursors as described in the PNP Updated Final Safety Analysis Report (UFSAR), nor does it adversely alter design assumptions, conditions, or configurations of the facility, and it does not adversely impact the ability of structures, systems, or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the way in which safety related systems perform their functions as required by the accident analysis. The SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition will remain capable of performing their design functions.

The purpose of the proposed amendment is to permit PNP to adopt a new risk-informed, performance based fire protection licensing basis that complies with the requirements of 10 CFR 50.48(a) and (c), as well as the guidance in RG 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection requirements that are an acceptable alternative to the 10 CFR Part 50, Appendix R, fire protection features (69 FR 33536; June 16, 2004). Engineering analyses, including engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance based requirements of NFPA 805 have been met.

The NFPA 805, taken as a whole, provides an acceptable alternative for satisfying General Design Criterion 3 (GDC 3) of Appendix A to 10 CFR Part 50, meets the underlying intent of the NRC's existing fire protection regulations and guidance, and achieves defense-in-depth along with the goals, performance objectives, and performance criteria specified in NFPA 805, Chapter 1. In addition, if there are any increases in core damage frequency (CDF) or risk as a result of the transition to NFPA 805, the increase will be small, governed by the delta risk requirements of NFPA 805, and consistent with the intent of the Commission's Safety Goal Policy.

Based on the above, the implementation of the proposed amendment to transition the fire protection plan at PNP to one based on NFPA 805, in accordance with 10 CFR 50.48(c), does not result in a significant increase in the probability of any accident previously evaluated. In addition, equipment required to mitigate an accident remains capable of performing the assumed function.

Therefore, the consequences of any accident previously evaluated are not significantly increased with the implementation of this amendment.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any kind of accident previously evaluated?

Response: No.

Operation of PNP in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Any scenario or previously analyzed accident with offsite dose was included in the evaluation of DBAs documented in the UFSAR. The proposed change does not alter the requirements or function for systems required during accident conditions. Implementation of the new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in RG 1.205, Revision 1 will not result in new or different accidents. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of this amendment is to permit ENO to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in RG 1.205, Revision 1. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R fire protection features (69 FR 33536; June 16, 2004).

The requirements in NFPA 805 address only fire protection and the impacts of fire on the plant that have already been evaluated. Based on this, the implementation of this amendment does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated. The proposed changes do not involve new failure mechanisms or malfunctions that can initiate a new accident.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created with the implementation of this amendment.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Operation of PNP in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the UFSAR. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design function.

The purpose of this amendment is to permit ENO to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in RG 1.205, Revision 1. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R fire protection features (69 FR 33536; June 16, 2004). Engineering analyses, including engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based methods do not result in a significant reduction in the margin of safety.

Based on this, the implementation of this amendment does not significantly reduce the margin of safety. The proposed changes are evaluated to ensure that the risk and safety margins are kept within acceptable limits.

Therefore, the transition does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, New York 10601.

NRC Branch Chief: Robert D. Carlson.

Entergy Nuclear Vermont Yankee, LLC., and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 19, 2013. A publicly-available version is available in ADAMS under Accession No. ML13358A338.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would change the Vermont Yankee Cyber Security Plan Implementation Schedule Milestone 8 full implementation date from December 15, 2014, to June 30, 2016. The proposed amendment would also revise the existing operating license Security Plan license condition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the CSP [Cyber Security Plan] Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the Technical Specifications. The proposed change to the CSP Implementation Schedule is administrative in nature. In addition, the milestone date delay for full implementation of the CSP has no substantive impact because other measures have been taken which provide adequate protection during this period of time. Because there is no change to established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, New York, 10601.

NRC Branch Chief: Benjamin G. Beasley.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation; Arizona Public Service Company, et al., Docket Nos. 50–528, 50–529, and 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona; Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina; and Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina; Entergy Nuclear Operations, Inc., Docket Nos. 50–03, 50–247, and 50–286, Indian Point Nuclear Generating, Units 1, 2, and 3, Westchester County, New York; Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan; Entergy Nuclear Vermont Yankee, LLC. and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007), apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 21st day of February 2014.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71596; File No. 4–668]

Joint Industry Plan; BATS Exchange, Inc., BATS–Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and Topaz Exchange, LLC; Order Approving Proposed National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail

February 21, 2014.

I. Introduction

On September 3, 2013, BATS Exchange, Inc., BATS–Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc., and Topaz Exchange, LLC (collectively, ''SROs'' or ''Participants'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] a proposed National Market System (''NMS'') Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail (''Plan'').[3] The Participants requested that the Commission approve the Plan.[4] The Plan was published for comment in the **Federal Register** on November 21, 2013.[5] The Commission received six comment letters from five commenters in response to the proposal.[6] On January 31, 2014, the Participants to the Plan responded to the comment letters.[7] This order approves the Plan.

II. Background

On July 11, 2012, the Commission adopted Rule 613 under the Act to require the SROs to jointly submit an NMS plan (''CAT NMS Plan'') to create, implement, and maintain a consolidated order tracking system, or consolidated audit trail (''CAT''), with respect to the trading of NMS securities, that would capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution.[8] Rule 613 outlines a broad framework for the creation, implementation, and maintenance of the consolidated audit trail, including the minimum elements the Commission believes are necessary for an effective consolidated audit trail. In instances where Rule 613 sets forth minimum requirements for the consolidated audit trail, the Rule provides flexibility to the SROs to draft the requirements of the CAT NMS Plan in a way that best achieves the objectives of the Rule. Specifically, Rule 613 incorporates a series of twelve ''considerations'' that the Participants must address in the CAT NMS Plan, including:

- The specific details and features of the CAT NMS Plan;
- The Participants' analysis of the CAT NMS Plan's costs and impact on Competition, efficiency, and capital formation;
- The process in developing the CAT NMS Plan;
- Information about the implementation of the CAT NMS Plan; and
- Milestones for the creation of the consolidated audit trail.[9]

As part of the discussion of these ''considerations,'' the Participants must include cost estimates for the proposed solution, and a discussion of the costs and benefits of alternate solutions considered but not proposed.[10] In addition, Rule 613 requires that the Participants: (1) Provide an estimate of the costs associated with creating, implementing, and maintaining the consolidated audit trail under the terms of the CAT NMS Plan submitted to the Commission for its consideration; (2) discuss the costs, benefits, and rationale for the choices made in developing the CAT NMS Plan submitted; and (3) provide their own analysis of the submitted CAT NMS Plan's potential impact on competition, efficiency, and capital formation.[11] These detailed requirements are intended to ensure that the Commission and the public have sufficiently detailed information to carefully consider all aspects of the CAT NMS Plan ultimately submitted by the Participants.[12]

In light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal (''RFP'') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan.[13] The Participants published the RFP on February 26, 2013, and requested that any potential

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from the SROs dated August 23, 2013 (''Submission Letter'').

[4] *Id.* at 1.

[5] *See* Securities Exchange Act Release No. 70892 (November 15, 2013), 78 FR 69910 (''Notice'').

[6] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Marcia E. Asquith, Senior Vice President and Corporate Secretary, Financial Industry Regulatory Authority, Inc. (''FINRA''), dated December 20, 2013 (''FINRA Letter''); from Anonymous (''Anonymous 1''), dated December 23, 2013 (''Anonymous 1 Letter''); from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated December 23, 2013 (''SIFMA Letter''); from Manisha Kimmel, Executive Director, Financial Information Forum (''FIF''), dated December 23, 2013 (''FIF Letter''); Anonymous (''Anonymous 2''), dated December 23, 2013 (''Anonymous 2 Letter'') from Manisha Kimmel, Executive Director, FIF, dated January 24, 2014 (''FIF Letter II'').

FINRA notes that it has two roles with respect to the development of the consolidated audit trail: (1) A role as a Participant in developing the CAT NMS Plan (as defined below) (''SRO Side'') and (2) a role as an entity that has submitted an intent to submit a Bid (as defined below) in response to the RFP (as defined below) (''Bid Side''). FINRA notes that it has implemented a communications firewall between the SRO Side and the Bid Side, including policies and procedures designed to prevent the members of the SRO Side and the Bid Side from communicating with one another about non-public matters involving the consolidated audit trail. The FINRA Letter was submitted by the Bid Side. *See* FINRA Letter at 1.

Copies of all comments received on the proposed Plan are available on the Commission's Web site, located at *http://www.sec.gov/comments/4-668/4-668.shtml*. Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. ET.

[7] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from the Participants, dated January 31, 2014 (''Response Letter'').

[8] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2013) (''Adopting Release'').

[9] *See* Rule 613(a)(1)(i)–(xii).

[10] *See* Rule 613(a)(1)(vii); Rule 613(a)(1)(xii).

[11] *See* Rule 613(a)(1)(viii).

[12] *See* Adopting Release, *supra* note 8, at 45725.

[13] *See* Submission Letter, *supra* note 3, at 3.

bidders notify the Participants of their intent to bid by March 5, 2013. Thirty-one firms submitted an intent to bid in response to the publication of the RFP; four of the firms were Participants or Affiliates of Participants.[14]

III. Description of the Proposal

The Participants filed the Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP (''Bids'')[15]—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail (''Plan Processor'').[16]

A. Governance

Section III of the Plan establishes the overall governance structure the Participants have chosen.[17] Specifically, the Participants propose establishing an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring the Participants' joint obligations under Rule 613 are met in a timely and efficient manner. As set forth in Section III(B) of the Plan, each Participant will select one individual and one substitute to serve on the Operating Committee; however, other representatives of each Participant are permitted to attend Operating Committee meetings. Section III of the Plan also establishes the procedures for the Operating Committee, including provisions regarding meetings, Participants' voting rights, and voting requirements.

B. Conflicts of Interest

The Participants recognize their important regulatory obligations with respect to the development of the CAT NMS Plan, and ultimately the creation and operation of the consolidated audit trail.[18] However, they also recognize that Participants or Affiliates of Participants may also be Bidders seeking to serve as the Plan Processor or may be a subcontractor to Bidders seeking to serve as the Plan Processor.[19] Accordingly, the Participants have sought to mitigate these potential conflicts of interest by including in the Plan multiple provisions, which are described below, designed to balance these competing factors. The Participants believe that the Plan achieves this balance by allowing all Participants to participate meaningfully in the process of creating the CAT NMS Plan and choosing the Plan Processor while imposing strict requirements to ensure that the participation is independent and that the process is fair and transparent.[20]

C. Plan Processor Selection Process

1. Bidder Shortlist Determination

Sections V and VI of the Plan[21] set forth the process for the Participants' evaluation, and narrowing down, of the Bids, and choosing the Plan Processor.[22] Pursuant to these Sections, the evaluation of Bids and selection of the Plan Processor will be performed by a Selection Committee composed of one senior officer from each Participant (''Voting Senior Officer'').[23] The SROs noted that, because of the potential conflicts of interest noted above, the Plan includes multiple requirements to increase the independence of the Voting Senior Officer who participates on the Selection Committee on behalf of a Bidding Participant.[24] The criteria set forth in Section V(D) of the Plan include requirements concerning the Voting Senior Officer's job responsibilities, decision-making authority, and reporting, and require that the Bidding Participant establishes functional separation between its Plan responsibilities and its business/commercial (including market operations) functions. In addition, the criteria prohibit any disclosure of information regarding the Bid to the Voting Senior Officer and prohibit the Voting Senior Officer from disclosing any non-public information gained in his or her role as such. According to the SROs, these criteria are intended to insulate the Voting Senior Officer from any inside knowledge regarding the Bid (while also preventing any information about the evaluation process from being shared with staff preparing the Bidding Participant's Bid) and to reduce any potential personal motivation that may exist that could improperly influence a Voting Senior Officer's decisions.[25]

Any action requiring a vote by the Selection Committee under the Plan can only be taken in a meeting in which all Participants entitled to vote are present.[26] All votes taken by the Selection Committee are confidential and non-public, and a Participant's individual votes will not be disclosed to other Participants or to the public.[27] For

[14] Since that time, 13 firms—including two Participants and one Affiliate of a Participant—have formally notified the Participants that they will not submit bids as primary bidders. A list of firms that submitted an intent to bid is located on the Participants' Web site at *www.catnmsplan.com* (''CAT NMS Plan Web site''). According to the Plan, ''[a]n 'Affiliate' of an entity means any entity controlling, controlled by, or under common control with such entity.'' *See* Section I(A) of the Plan.

[15] *See* Section I(C) of the Plan.

[16] *See* Submission Letter, *supra* note 3, at 4.

[17] Section I sets forth the definitions used throughout the Plan, and Section II lists the Participants and establishes the requirements for admission of new, or withdrawal of existing, Participants. Each currently approved national securities exchange and national securities association subject to Rule 613(a)(1) is a Participant in the Plan. Section II(B) of the Plan provides that any entity approved by the Commission as a national securities exchange or national securities association under the Act after the effectiveness of the Plan shall become a Participant by satisfying each of the following requirements: (1) effecting an amendment to the Plan by executing a copy of the Plan as then in effect (with the only change being the addition of the new Participant's name in Section II of the Plan) and submitting such amendment to the Commission for approval; and (2) providing each then-current Participant with a copy of such executed Plan.

[18] *See* Notice, *supra* note 5, at 69911.

[19] *Id.*

[20] *Id.*

[21] Section IV of the Plan governs amendments to the Plan. In general, except with respect to the addition of new Participants, any change to the Plan requires a written amendment that sets forth the change, is executed by over two-thirds of the Participants, and is approved by the Commission pursuant to Rule 608 of the Act or otherwise becomes effective under Rule 608.

[22] Initial steps in the evaluation and selection process will be performed pursuant to the Plan; the final two rounds of evaluation and voting, as well as the final selection of the Plan Processor, will be performed pursuant to the CAT NMS Plan. The sections of the CAT NMS Plan governing these final two voting rounds are set forth in Sections VI(D) and (E) of the Plan and will be incorporated into the CAT NMS Plan. The Participants believe it is essential that the entire process be laid out in the Plan so that the Commission can consider and approve the entire evaluation and selection process, even though the final two voting rounds, including the selection of the Plan Processor, will not be conducted until after the approval of the CAT NMS Plan. *See* Submission Letter, *supra* note 3, at 4.

[23] In the case of Affiliated Participants, one individual may be (but is not required to be) the Voting Senior Officer for more than one or all of the Affiliated Participants.

[24] The Plan defines a ''Bidding Participant'' broadly to include any Participant that: (1) submits a Bid; (2) is an Affiliate of an entity that submits a Bid; or (3) is included, or is an Affiliate of an entity that is included, as a Material Subcontractor as part of a Bid. *See* Section I(E) of the Plan. A ''Material Subcontractor'' is ''any entity that is known to the Participant to be included as part of a Bid as a vendor, subcontractor, service provider, or in any other similar capacity and, excluding products or services offered by the Participant to one or more Bidders on terms subject to a fee filing approved by the SEC, (1) is anticipated to derive 5% or more of its annual revenue in any given year from services provided in such capacity; or (2) accounts for 5% or more of the total estimated annual cost of the Bid for any given year.'' *See* Section I(J) of the Plan. The Plan provides that ''[a]n entity will not be considered a 'Material Subcontractor' solely due to the entity providing services associated with any of the entity's regulatory functions as a self-regulatory organization registered with the SEC.'' *See id.*

[25] *See* Notice, *supra* note 5, at 69912. As described below, even with the independence criteria in place, the Plan also requires recusal by the Voting Senior Officer from certain votes.

[26] *See* Section V(C)(1) of the Plan.

[27] *See* Section V(B)(4) of the Plan.

this reason, the Plan provides that votes of the Selection Committee will be tabulated by an independent third party approved by the Operating Committee.[28] Moreover, the Participants do not anticipate that aggregate votes or anonymized voting distribution numbers will be provided to the Participants following votes by the Selection Committee.[29]

The Plan divides the processes for review and evaluation of Bids, and selection of the Plan Processor, into four separate stages. After Bids are submitted,[30] Section VI(A) of the Plan provides that the Selection Committee will review them to determine which are Qualified Bids (*i.e.,* Bids that contain sufficient information to allow the Voting Senior Officers to meaningfully assess and evaluate them).[31] At this initial stage, if two-thirds or more of the Participants determine that a Bid does not meet the threshold for a Qualified Bid, the Bid will be eliminated from further consideration. The Participants believe this initial step will ensure that only those Bids meeting a minimum level of detail and sufficiency will move forward in the process, and insufficient Bids can be eliminated.[32]

Following the elimination of Bids that are not Qualified Bids, each Qualified Bidder will be provided the opportunity to present its Bid to the Selection Committee.[33] After the Qualified Bidders have made their presentations, the Selection Committee will establish a subset of Bids that will move on in the process (''Shortlisted Bids'').[34] The Plan provides that, if there are six or fewer Qualified Bids submitted, all of those Bids will be selected as Shortlisted Bids.[35] If there are more than six but fewer than eleven Qualified Bids, the Selection Committee will choose five Shortlisted Bids, and, if there are eleven or more Qualified Bids, the Selection Committee will choose 50% of the Qualified Bids as Shortlisted Bids.[36]

When voting to select the Shortlisted Bids from among the Qualified Bids, each Voting Senior Officer must rank his or her selections, and the points assigned to the rankings increase in single-point increments.[37] Thus, for example, if five Shortlisted Bids are to be chosen, each Participant will vote for its top five choices in rank order, with the first choice being given five points, the second choice four points, the third choice three points, the fourth choice two points, and the fifth choice one point. The Plan also provides that at least two Non-SRO Bids must be included as Shortlisted Bids, provided there are two Non-SRO Bids that are Qualified Bids.[38] According to the SROs, this provision further reduces the impact of potential conflicts of interest in choosing Shortlisted Bids.[39] If, following the vote, no Non-SRO Bids have been selected as Shortlisted Bids, the Plan requires that the two Non-SRO Bids receiving the highest cumulative votes be added as Shortlisted Bids.[40] If, in this scenario, a single Non-SRO Bid was a Qualified Bid, that Non-SRO Bid would be added as a Shortlisted Bid.[41] The Participants believe selecting Shortlisted Bids is appropriate both to ensure that Bidders submit a complete and thorough Bid initially and so that Qualified Bidders will know whether they have a realistic opportunity to be selected as the Plan Processor after the CAT NMS Plan is approved.[42]

2. Bid Revision and Selection of Plan Processor

Following the selection of Shortlisted Bids, the Participants will identify the optimal proposed solution(s) for the consolidated audit trail for inclusion in the CAT NMS Plan for submission to the Commission.[43] As a part of this process, and the overall review and evaluation of Shortlisted Bids, the Selection Committee may consult with the advisory committee required and established by Rule 613 (''Advisory Committee''). If the Commission approves the CAT NMS Plan, the Selection Committee will determine, by majority vote, which Shortlisted Bidders will have the opportunity to revise their Bids in light of the provisions in the final, approved CAT NMS Plan.[44] In making a decision whether to permit a Shortlisted Bidder to revise its Bid, the Selection Committee will consider the provisions in the CAT NMS Plan as well as the content of the Shortlisted Bidder's initial Bid. According to the SROs, to reduce potential conflicts of interest, the Plan also provides that, if a Bid submitted by or including a Bidding Participant or an Affiliate of a Bidding Participant is a Shortlisted Bidder, that Bidding Participant must recuse itself from all votes regarding whether a Shortlisted Bidder will be permitted to revise its Bid.[45]

Section VI(E) provides that, after the permitted Shortlisted Bidders submit any revisions, the Selection Committee will select the Plan Processor from the Shortlisted Bids in two rounds of voting where, subject to the recusal provision described below, each Participant has one vote. In the first round, each Participant will select a first and second choice, with the first choice receiving two points and the second choice receiving one point. The two Shortlisted Bids receiving the highest cumulative scores in the first round will advance to the second round.[46] In the event of a tie resulting in more than two Shortlisted Bids advancing to the second round, the tie will be broken by assigning one point per vote to the tied Shortlisted Bids, and the one with the most votes will advance. If this procedure fails to break the tie, a revote will be taken on the tied Shortlisted Bids with each vote receiving one point. If the tie persists, the Participants will identify areas for discussion, and revotes will be taken until the tie is broken.[47]

Once two Shortlisted Bids have been chosen, the Participants will vote for a single Shortlisted Bid from the final two to determine the Plan Processor.[48] If one or both of the final Bids is submitted by or includes a Bidding Participant or an Affiliate of a Bidding Participant, the Bidding Participant must recuse itself from the final vote.[49] In the event of a

[28] *Id.*

[29] *See* Notice, *supra* note 5, at 69912.

[30] The Participants anticipate that Bids must be submitted four weeks after the Commission approves the Plan. *See id.*

[31] The Plan defines a Qualified Bid as ''a Bid that is deemed by the Selection Committee to include sufficient information regarding the Bidder's ability to provide the necessary capabilities to create, implement, and maintain a consolidated audit trail so that such Bid can be effectively evaluated by the Selection Committee.'' *See* Section I(Q) of the Plan. The Plan provides that, ''[w]hen evaluating whether a Bid is a Qualified Bid, each member of the Selection Committee shall consider whether the Bid adequately addresses the evaluation factors set forth in the RFP, and apply such weighting and priority to the factors as such member of the Selection Committee deems appropriate in his or her professional judgment.'' *See id.*

[32] *See* Notice, *supra* note 5, at 69912.

[33] See Section VI(B)(1) of the Plan.

[34] See Section VI(B)(2) of the Plan.

[35] *See id.*

[36] *See* Sections VI(B)(3)–(4) of the Plan. The Plan provides that, if there is an odd number of Qualified Bids, the number of Shortlisted Bids to be chosen will be rounded up to the next whole number (*e.g.,* if there are thirteen Qualified Bids, seven Shortlisted Bids will be selected). *See* Section VI(B)(4) of the Plan. In the event of a tie to select the Shortlisted Bids, all such tied Qualified Bids will be Shortlisted Bids. *See* Section VI(B)(3)(c) of the Plan.

[37] *See* Section VI(B)(3) of the Plan.

[38] *Id.* The Plan defines a ''Non-SRO Bid'' as ''a Bid that does not include a Bidding Participant.'' *See* Section I(L) of the Plan.

[39] *See* Notice, *supra* note 5, at 69912–13

[40] *See* Section VI(B)(3)(d) of the Plan.

[41] *Id.*

[42] *See* Notice, *supra* note 5, at 69912.

[43] *See* Submission Letter, *supra* note 3, at 7; Section VI(D) of the Plan.

[44] *See* Section IV(D)(1) of the Plan.

[45] *See* Notice, *supra* note 5, at 69913. *See* Section V(B)(2) of the Plan.

[46] *See* Section VI(E)(3) of the Plan. Each round of voting throughout the Plan is independent of other rounds.

[47] *Id.*

[48] *See* Section VI(E)(4)(b) of the Plan.

[49] *See* Section V(B)(2) of the Plan.

tie, a revote will be taken. If the tie persists, the Participants will identify areas for discussion and, following these discussions, revotes will be taken until the tie is broken.[50] As set forth in Section VII of the Plan, following the selection of the Plan Processor, the Participants will file with the Commission a statement identifying the Plan Processor and including the information required by Rule 608.

D. Implementation

The terms of the Plan will be operative immediately upon approval of the Plan by the Commission. The Participants have announced that Bids must be submitted four weeks after the Commission's approval of the Plan.[51] The Participants will begin reviewing and evaluating the Bids pursuant to Section VI of the Plan upon receipt of the Bids, and anticipate that it will take seven months to evaluate the Bids and submit the CAT NMS Plan to the Commission pursuant to Sections VI(A) and (B) of the Plan.[52] As noted above, upon approval of the CAT NMS Plan, the Plan will automatically terminate. The review of revised Shortlisted Bids and the selection of the Plan Processor will be undertaken as set forth in Sections VI(D) and (E) of the Plan as those sections are incorporated into the CAT NMS Plan.

IV. Comment Letters and Response Letter

The Commission received six comment letters from five commenters on the proposed Plan.[53] Three of the commenters generally supported the Plan.[54] All of the commenters had concerns with, and/or questions regarding, specific details on the terms of the Plan, collectively identifying three main issues—(1) industry participation in the evaluation of Bidders, the selection of the Plan Processor, and the drafting of the CAT NMS Plan; (2) transparency in SRO decision-making; and (3) conflicts of interest—and offering suggestions as to how those concerns and/or questions could be addressed.[55] The Participants responded to the comments regarding the proposal.[56]

A. Industry Participation

As proposed in the Plan, only the SROs will participate in the selection process, and they may consult with the Advisory Committee when reviewing and evaluating the Shortlisted Bids.[57] Three commenters believe that industry participation in the selection process is important, and they suggest varying solutions to ensure that such participation is required by the Plan.[58]

One commenter states that the process should include the integrated involvement and meaningful participation of representatives of the broker-dealer community.[59] Specifically, the commenter states that there should be public representation on the Operating Committee, and that non-SRO, industry members should be involved in the evaluation of Bidders and the selection of the Plan Processor.[60] The commenter believes that ''[t]he unique expertise and insight of the broker-dealer community complements that of the SROs and would bring the perspective of the entities that will be providing the 'lion's share' of the reported data to the CAT.''[61] This commenter additionally recommends that the Participants amend the Plan to establish the Advisory Committee as part of this Plan, as opposed to waiting for the submission of the CAT NMS Plan, with safeguards and procedural protections to assure that the SROs fully consider the views of the committee.[62] Another commenter states that it supports consultation with the Advisory Committee as part of the selection process so long as safeguards are put in place to ensure the confidentiality of the Bidders' information is protected.[63] A third commenter believes that the Advisory Committee's scope of participation is extremely limited and should be expanded and it recommends that the SROs should be required to consult the Advisory Committee when reviewing the Shortlisted Bids to select the Plan Processor.[64]

In response to these comments, the SROs indicate how the Operating Committee has provided, and will continue to provide, for industry participation in the development of the CAT NMS Plan.[65] In response to the comment that Advisory Committee consultation should be mandatory as part of the review of Shortlisted Bidders, the SROs noted that they will consult proactively with the industry for input on key aspects of the Bids, so long as the selection process is not impaired, especially with regard to maintaining Bidder confidential information.[66] The SROs also note that they created the CAT Development Advisory Group (''DAG'') and that the DAG has been, and will continue to be, a valuable source of input for the development of the CAT NMS Plan.[67] The SROs state that they will continue to engage the industry on key topics pertaining to aspects of the Bids that directly affect the industry.[68] The SROs further state that, after Bids are received in response to the RFP, they are committed to providing the DAG with anonymized information taken from Bids that will provide the DAG members with enough specificity to allow them to understand the comparative advantages and disadvantages of the options being considered by the SROs, so that they can contribute in a meaningful way to the SROs' analysis of such information.[69] The SROs further note that they intend to work with the DAG to identify the particular sections of the RFP that will benefit from industry input during the evaluation of Bids.[70]

[50] *See* Section VI(E)(4)(c) of the Plan.

[51] *See* Notice, *supra* note 5, at 69913.

[52] *Id.*

[53] *See supra* note 6.

[54] *See* FINRA Letter at 1; SIFMA Letter at 1; FIF Letter at 1.

[55] *See* FINRA Letter at 1–2; Anonymous 1 Letter at 1; SIFMA Letter at 1; FIF Letter at 1–2; Anonymous 2 Letter at 1; FIF Letter II at 2–3.

[56] *See* Response Letter, *supra,* note 7.

[57] *See* Sections II and VI(D)(2) of the Plan.

[58] *See* SIFMA Letter; FINRA Letter; and FIF Letter.

[59] *See* SIFMA Letter at 1.

[60] *Id.* at 2–4.

[61] *Id.* at 3.

[62] *Id.* at 4–5. In particular, the commenter suggests that the Plan should require the SROs: (1) to document and provide the Advisory Committee with a written statement, explaining the reasons for any SRO rejection of a written recommendation submitted by the committee; and (2) to prepare agendas for meetings and provide documents to be discussed at the meetings in advance to give committee members sufficient time to analyze information and formulate views. *Id.*

[63] *See* FINRA Letter at 4. The commenter requests clarification on whether members of the Advisory Committee would be required to sign a non-disclosure agreement (''NDA'') if they are given access to confidential information as part of any consultation with the Selection Committee. *Id.* at 3–4.

[64] *See* FIF Letter at 4.

[65] *See* Response Letter, *supra* note 7, at 2–4.

[66] *Id.* The SROs, however, note that the creation of the Advisory Committee that is required by Rule 613(b)(7) (''Rule 613 Advisory Committee'') is not germane to the Plan. The SROs state that the requirement in Rule 613(b)(7) is that the CAT NMS Plan establish an Advisory Committee to advise the SROs on the implementation, operation and administration of the consolidated audit trail. The SROs then state that the Rule 613 Advisory Committee will be established in the CAT NMS Plan, and that the CAT NMS Plan will provide specifics as to the role of the Rule 613 Advisory Committee in the process of reviewing and evaluating Bids. *Id.* at 2.

[67] *Id.* at 2–4. The SROs also note their previous engagement with industry through posting industry questions on the CAT NMS Plan Web site and conducting open meetings. *Id.* at n.5.

[68] *Id.* at 2.

[69] *Id.* at 3. The SROs note that this information sharing will occur only after executed NDAs are in place with the appropriate industry members. *Id.* at n. 7.

[70] *Id.* at 3.

The SROs also explain that they understand that broad industry input during the development of the CAT NMS Plan is critical to selecting optimal proposed solutions, and that they will continue to hold discussions with the DAG at the greatest level of detail possible without compromising a fair selection process and confidential Bid information.[71]

B. Transparency

Several commenters stress the importance of transparency in the Bidder selection process and the standards the SROs will employ for review of Bids.[72] One commenter states that the Commission should not approve the Plan unless it is amended to provide public disclosure of the selection process.[73] The commenter recommends that the SROs publish the Bidders and the contents of the Bids, explaining that the Bids should be available to the public to inform the discussion regarding the costs and benefits, and technological feasibility of different solutions.[74] The commenter believes that these responses to the RFP and the SROs' rationale for eliminating them from consideration as the Plan Processor will be important for the industry to consider in commenting on the CAT NMS Plan.[75]

Another commenter recommends that the SROs share information contained in the Bids, specifically relating to the functions and interfaces of the entities (*i.e.,* broker-dealers and SROs) that are required to report to the CAT (''CAT Reporters''), so that the industry can provide feedback to the SROs for assessment of Bidder responses.[76] The commenter believes that broad input from the DAG during the CAT NMS Plan development process is critical to ensure that the SROs consider issues from the CAT Reporter perspective.[77] The commenter maintains that this information would represent an external description of the Plan Processor and should not require any disclosure of internal implementations or proprietary information from the Bidders.[78] Further, the commenter argues that this level of information will be public information once the CAT NMS Plan is published as Rule 613 requires that the CAT NMS Plan be sufficiently detailed to describe the alternatives to the solution selected by the SROs.[79] The commenter also argues that because Bids cannot be revised prior to the submission of the CAT NMS Plan pursuant to the proposed Plan, information leakage should not be a concern.[80]

The commenter also opines that if the SROs deem it necessary to require DAG members to sign NDAs in order to share confidential portions of Bidders' responses, any such NDAs should be targeted and finite in nature, specifically noting that DAG discussions on CAT Reporter functionality should not be subject to an NDA.[81] The commenter states that only confidential portions of Bids should be covered by NDAs, and that to the greatest extent possible, information relating to Bidders' responses should be publicly available to facilitate critical outreach from the DAG.[82]

In response to these comments, the SROs state that they do not intend to publish the content of the Bids in order to manage a fair process and to address Bidders' concerns regarding the confidentiality of proprietary and other sensitive information during the selection process.[83] The SROs represent that this is standard industry practice.[84] The SROs further indicate that, as required by Rule 613, the CAT NMS Plan submitted will discuss appropriate and anonymized elements of the Bids that were not selected, including the relative advantages and disadvantages of each solution, an assessment of the costs and benefits, and the basis upon which the SROs selected the optimal proposed solutions in the CAT NMS Plan.[85] The SROs also note that the CAT NMS Plan will be subject to notice and comment.[86] However, the SROs state that they will seek industry feedback on proposed approaches and key themes of the RFP responses.[87]

The SROs also state that, prior to any consultation with the Advisory Committee or the DAG about information contained in a Bid, the SROs will require the execution of an NDA.[88] In response to the comment regarding the scope of NDAs, the SROs state that NDAs will be appropriately drafted to protect confidential information while allowing for meaningful discussion between the SROs and members of the Advisory Committee or the DAG.[89]

Three commenters recommend that the selection criteria used to evaluate the Bids be publicly available.[90] Specifically, one commenter states that, if the evaluation criteria are thorough and known to all parties (*i.e.,* SROs, Bidders, the industry and the Commission), the process will be more transparent and fair.[91] This commenter suggests that the evaluation process and criteria used in the final two rounds of voting be published prior to each round of voting, or at a minimum reviewed with the industry via the DAG.[92] Another commenter requests clarification regarding the criteria that Voting Senior Officers will employ when reviewing and ranking Bids, both when selecting the Shortlisted Bids from the Qualified Bids and when selecting the Plan Processor from the Shortlisted Bids.[93] A third commenter suggests that the SROs should publish information about the results of each round of voting (*e.g.,* the total votes received by each Bidder or a ranking of the Bidders by voting result).[94]

In response to these comments, the SROs agree to publish more detailed descriptions of the evaluation criteria listed in the RFP, which will be used by each SRO as a guideline when evaluating Bids.[95] The SROs note that the evaluation criteria can be broadly grouped into the following five areas: (1) technical architecture, (2) operations—technical (processing capability), (3) operations—non-technical, (4) company information, and (5) contract and terms. The SROs further provide lists of criteria within each of the five areas in the Response Letter.[96] The SROs explain that each SRO's assessment will be informed by the defined criteria noted above but that an individual SRO may determine that other factors are important in making its independent evaluation of a Bid.[97] The SROs do not intend to publish voting results.[98] The SROs state that this approach is considered standard industry practice and there is no articulated benefit to making this information publicly available. The SROs state that they are concerned that the public disclosure of such information may incorrectly and

[71] *Id.*

[72] *See* FINRA Letter at 1–2; SIFMA Letter at 1–3; FIF Letter at 2–3; FIF Letter II at 2.

[73] *See* SIFMA Letter at 3.

[74] *Id.* at 2.

[75] *Id.*

[76] *See* FIF Letter at 2–3; and FIF Letter II at 2–3.

[77] *See* FIF Letter II at 3.

[78] *See* FIF Letter at 3.

[79] *See* FIF Letter II at 2–3.

[80] *Id.* at 2.

[81] *See* FIF Letter II at 3.

[82] *Id.*

[83] *See* Response Letter, *supra* note 7, at 9.

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] *Id.* at 8.

[88] *Id.*

[89] *Id.*

[90] *See* FINRA Letter at 2; SIFMA Letter at 3; FIF Letter at 2.

[91] *See* FIF Letter at 2.

[92] *Id.*

[93] *See* FINRA Letter at 2.

[94] *See* SIFMA Letter at 3.

[95] *See* Response Letter, *supra* note 7, at 4.

[96] *Id.* at 4–5.

[97] *Id.* at 5.

[98] *Id.* at 9.

inaccurately suggest the relative strength of a particular Bid without any meaningful context.[99]

One commenter recommends that the minutes of the SRO Operating Committee meetings be made public, in order to further increase transparency and serve as a communications vehicle for informing the industry of the CAT governance actions and decisions.[100] In response to this comment, the SROs indicate that the Operating Committee meeting minutes will not be made public either prior to or after approval of the CAT NMS Plan.[101] The SROs state that, in managing a fair process and maintaining Bidder confidentiality as provided for in the NDA executed with the Bidders, the SROs will not publish Operating Committee minutes during the Bid evaluation and selection process.[102] The SROs believe that this approach encourages effective and critical review of the Bids as well as open and frank discussions in light of all material considerations, including timing and complexity.[103] The SROs explain that the decisions made by the Operating Committee regarding aspects of the Bids will be reflected in the CAT NMS Plan, which will be open to public comment, and will include an analysis of both the optimal proposed solutions and those solutions not selected, thus providing the public with the opportunity to consider the SROs' decisions.[104] The SROs further state that, once the CAT NMS Plan has been approved and the Advisory Committee has been established, members of that committee will have the right to attend CAT management committee meetings, except for executive sessions, and, as such, will have access to the minutes from such meetings, as well as the right to receive information concerning the operation of the central repository and to provide their views to the SROs.[105]

Finally, one commenter requests clarification on whether the optimal proposed solutions for the CAT NMS Plan will be the product of an individual Bid or a composite of select portions of multiple Bids.[106] If it will be the latter, the commenter questions how the SROs will determine the costs and benefits of such solutions.[107] In response to this comment, the SROs clarify that the optimal proposed solutions could include approaches from different Bids in order to identify a solution that best meets the requirements of Rule 613.[108] The SROs recognize that there may be inherent challenges in combining elements of separate solutions, but they want to ensure the flexibility in the evaluation process to identify a holistic solution that is better suited to meet the requirements of Rule 613, while not being limited to the components of any individual Bid.[109] The SROs intend to consult with the DAG and the industry as part of the review of anonymized solutions from the Bids, including, but not limited to, requesting input on the technical and operational specifications of the proposed solutions, and the associated cost-benefit analysis.[110]

C. Conflicts of Interest

Two commenters express concerns that the provisions in the Plan that are intended to address conflicts of interest are insufficient.[111] One commenter questions the genuineness of the separation through firewalls within the SROs intended to segregate individuals participating in the selection process from those participating in the bidding process.[112] The commenter also expresses concern that it is challenging to enforce and monitor such restrictions.[113] The commenter further recommends that the Plan either limit the Bidders to non-SROs or only to SROs.[114] Another commenter recommends that the Plan require Bidding Participants to be recused from both rounds of voting on Shortlisted Bids, not just the second round of voting to select the Plan Processor.[115]

In response to these comments, the SROs note the important regulatory obligations that exist for each of them with respect to the creation and operation of the CAT, and that it is essential that each one contribute to the development of the CAT NMS Plan and the selection of the Plan Processor.[116] However, the SROs recognize that SROs or Affiliates of SROs may also be Bidders seeking to serve as the Plan Processor or may be included as part of a Bid.[117] The SROs represent that they have sought to mitigate these potential conflicts of interest by including in the Plan multiple provisions designed to balance these competing factors, and have established information barriers, which they believe are sufficient to maintain functional separation between employees representing a specific SRO as part of the consortium planning the CAT and employees developing Bids.[118] The SROs state that the implementation of information barriers is considered a standard industry practice for mitigating the risks of conflicts of interests.[119] The SROs continue to believe that the Plan achieves this balance by allowing all SROs to participate meaningfully in the process of creating the CAT NMS Plan and choosing the Plan Processor, while imposing strict requirements to ensure that the participation is independent and that the process is fair and transparent.[120]

Distinct from the concern regarding potential conflicts of interest arising from an SRO that is also a Bidder, one commenter suggests that the Plan or NDA should be amended to require, even for SROs that are not Bidders or Affiliates of Bidders, the functional separation of employees representing an SRO for purposes of the selection process and its business or commercial functions to safeguard against misuse of Bidders' confidential information.[121]

The SROs state that, although the Bidding Participants are required to maintain the functional separation suggested by the commenter, it will not be practical for all other SROs to isolate their employees that participate in the Bid evaluation and selection process, as varying skillsets will be required to fully evaluate the Bids, and many SROs are faced with resource constraints that would make them unable to wall off certain personnel without either decreasing the expertise available to evaluate Bids or having inadequate resources to manage their business/commercial functions.[122] While the SROs state that it is not practical to isolate non-Bidding SRO employees participating in the Bid evaluation and selection process from other SRO employees, they represent that, to protect Bidders' confidential information, all SROs will adhere to the section of the NDA executed with Bidders that restricts the distribution and use of Bid information by SROs,

[99] *Id.*

[100] *See* FIF Letter at 2.

[101] *See* Response Letter, *supra* note 7, at 10.

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] *Id.* The SROs state, however, that consistent with standard industry practices, the SROs will not share the minutes with the industry as a whole. *Id.*

[106] *See* FIF Letter at 2.

[107] *Id.*

[108] *See* Response Letter, *supra* note 7, at 8.

[109] *Id.*

[110] *Id.* at 4.

[111] *See* Anonymous 1 Letter at 1; Anonymous 2 Letter at 1.

[112] *See* Anonymous 1 Letter at 1.

[113] *Id.*

[114] *Id.*

[115] *See* Anonymous 2 Letter at 1. The commenter has submitted an intent to bid on the RFP. *Id.*

[116] *See* Response Letter, *supra* note 7, at 7.

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *Id.*

[121] *See* FINRA Letter at 4.

[122] *Id.*

their affiliates, agents, advisors, and contractors by obligating such parties:

(i) to hold the Disclosing Party's Confidential Information in strict confidence and to protect such Confidential Information from disclosure to others (including, without limitation, all precautions the Receiving Party employs with respect to its own Confidential Information), (ii) no [sic] to divulge any such Confidential Information . . . other than to its Representatives for the purpose of assisting the Receiving Party with respect to the CAT NMS Selection Process, and (ii) [sic] not to make use whatsoever at any time of Confidential Information except to evaluate and discuss the CAT NMS Selection Process . . . the Receiving Party shall ensure that its Representatives comply with this Agreement as if they were parties to this Agreement.[123]

D. Other Issues

1. Revision of Bids

The proposed Plan provides that, following approval of the CAT NMS Plan, upon a majority vote of the Selection Committee, Shortlisted Bidders will be permitted to revise their Bids provided that revisions are necessary or appropriate in light of the Shortlisted Bidder's initial Bid and the provisions in the approved CAT NMS Plan. One commenter recommends that the Selection Committee instead should only allow revised Bids: (1) After the first round of voting on the Shortlisted Bidders, at which time the list of Bidders would be narrowed to two; and (2) only for the purposes of confirming that the final two Bidders have proposals that meet the requirements of the approved CAT NMS Plan.[124] The commenter also believes that, if revisions would require material changes to the Bid of either of the two remaining Bidders, both Bidders should be permitted to revise their Bids.[125] This commenter is concerned that allowing Bidders to revise their Bids too early in the selection process could materially impact the depth and breadth of information that Bidders are willing to provide in their initial Bids.[126] Under the Plan as proposed, the commenter believes that Bidders will not have a strong incentive to put forth their best ideas, processes, systems, and methods in response to the initial RFP, and will include only enough information to meet the Qualified Bidder threshold.[127] Contrary to this position, another commenter believes that all Bidders should be permitted to revise their Bids, based on the provisions contained in the approved CAT NMS Plan, and recommends removing the requirement that the Selection Committee grant permission to revise Bids.[128]

In response to these comments, the SROs state that they recognize the value of allowing the Shortlisted Bidders to revise their Bids and expect that including this component in the Plan will result in better quality and more comprehensive Bids from all Bidders.[129] Further, the SROs note that preserving their discretion to limit revision of Bids is important, particularly in the instance where there are six or fewer Bidders, all of whom would automatically become Shortlisted Bidders.[130] The SROs believe that without SRO discretion to determine which Bidders can revise their Bids, Bidders may not provide detailed information in their initial Bids, but will await the final structure of the CAT NMS Plan to provide full information in their revised Bids.[131] Therefore, the SROs believe they need discretion to not allow a Shortlisted Bidder to revise its Bid if the initial Bid did not clearly communicate a cogent, workable plan and evidence the ability to execute the plan.[132] Accordingly, the SROs will assess whether revisions are necessary or appropriate in light of the content of the Shortlisted Bidder's initial Bid and the provisions of the approved CAT NMS Plan.[133] More specifically, the SROs anticipate permitting revision of Bids where the initial Bid clearly communicated a feasible CAT approach and showed a substantial likelihood that the Bidder could implement the approach contained in the approved CAT NMS Plan.[134] The SROs believe this is consistent with standard industry practices when managing an RFP process.[135]

2. Timing

Two commenters express concerns with timing related to the selection process.[136] One commenter takes issue with the due date for Bids in response to the RFP being four weeks after approval of this Plan.[137] Specifically, the commenter believes that Bidding Participants are likely to have information about the final selection process and associated timeline for approval before it is made publicly available, and that Bidders must have adequate time to modify their Bids to reengage subcontractors and product/service providers, as well as to update prices for technology components.[138] Accordingly, the commenter recommends that the due date for Bids in response to the RFP be 12 weeks after approval of the Plan.[139] Another commenter does not believe that two months after effectiveness of the CAT NMS Plan is sufficient time for the SROs to select a Plan Processor from among the Shortlisted Bidders, particularly if there are significant changes from the proposed and approved CAT NMS Plan.[140] The commenter recommends a four- to six-month period to allow the Shortlisted Bidders time to revise their Bids to reflect the approved CAT NMS Plan, and to allow the SROs time to consider the Bids and seek industry and technical expertise to aid their evaluation process.[141]

In response to the comment regarding the due date for Bids, the SROs indicate that the anticipated deadline four weeks after the approval of the Plan is based on the current requirement to submit the CAT NMS Plan by September 30, 2014.[142] However, the SROs note that, if the approved Plan has a material impact on the Bidders' ability to respond to the RFP, then the due date may be extended.[143] In response to the comment regarding the timeframe to select the Plan Processor, the SROs note that that requirement is mandated by Rule 613(a)(3)(i) and that they hope to meet the deadline.[144] Going forward, the SROs indicate that they will continue to evaluate whether, and how much, additional time they may be required to seek from the Commission for the selection of the Plan Processor.[145]

3. Quorum Standard

One commenter is concerned that the quorum standard for the Selection Committee is too difficult and could lead to delays.[146] Specifically, the commenter notes that each SRO's Voting Senior Officer is a very unique employee and is concerned that such individuals may not always be available for meetings of the Selection

[123] *See* Response Letter, *supra* note 7, at 10–11.

[124] *See* FINRA Letter at 2–3.

[125] *Id* at 3.

[126] *Id* at 3.

[127] *Id.*

[128] *See* FIF Letter at 4.

[129] *See* Response Letter, *supra* note 7, at 6.

[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] *See* Anonymous 2 Letter at 1; FIF Letter at 5.

[137] *See* Anonymous 2 Letter at 1.

[138] *Id.*

[139] *Id.*

[140] *See* FIF Letter at 5.

[141] *Id.*

[142] *See* Response Letter, *supra* note 7, at 11–12.

[143] *Id.* at 12. Any such changes to the due date will be communicated to Bidders as soon as such a decision is made. *Id.*

[144] *Id.* at 11.

[145] *Id.*

[146] *See* FIF Letter at 2.

Committee.[147] The commenter further believes that, because all Voting Senior Officers are required to be present in order to have a quorum of the Selection Committee, delays in the evaluation and voting procedures could occur.[148] Consequently, the commenter recommends that an alternate member, with less stringent qualifications, be considered as a voting substitute for the Voting Senior Officer, but any actions taken by the voting substitute would continue to be the direct responsibility of the Voting Senior Officer.[149]

In response to this comment, the SROs state that they will ensure that all Voting Senior Officers will be in attendance for all voting processes as part of the Plan Processor selection, either in person or telephonically, as permitted under operation of the CAT beyond the selection of the Plan Processor.[150] The SROs further indicate that the Plan does not affect the operation of the CAT beyond the selection of the Plan Processor, and, as such, the SROs will include additional personnel with voting rights as part of the broader governance of the CAT.[151]

4. Information Sharing

Another commenter expresses a concern related to information sharing with Bidders.[152] Specifically, the commenter believes that some Bidders may be affiliated or associated with members of the DAG and, therefore, may have access to information relating to DAG discussions that other Bidders do not.[153] The commenter further believes that all Bidders should have uniform information relating to DAG discussions and recommends that a formal process be developed under which the SROs disseminate information to all Bidders relating to DAG discussions that are relevant to the Bidding process.[154] Another commenter similarly stated that the Bidders and all other interested parties should have access to DAG discussions.[155] The commenter recommended that all DAG meeting materials and minutes could be posted on the CAT NMS Plan Web site to achieve this goal.[156]

In response to the concern that some Bidders will have access to the DAG discussions while others will not, the SROs state that, prior to consultation on any aspect of information included in a Bid, the SROs intend to require the execution of NDAs by members of the Advisory Committee or the DAG, thus facilitating communication and mitigating the confidentiality risks of proprietary Bidder information.[157] Additionally, the SROs indicate that it will be a requirement that no member of the Advisory Committee or the DAG will have affiliations with Bidding entities, unless such members have functional separation between their representatives on the DAG and their representatives involved with entities preparing or participating in a Bid similar to those restrictions imposed on Bidding SROs under Section V(D) of the Plan.[158]

In response to comments recommending the dissemination of DAG materials, the SROs state that they are committed to holding an open dialogue with industry members during the development of the CAT NMS Plan and will host additional industry outreach events to communicate, among other updates, decisions and ongoing discussion topics from DAG meetings.[159] The SROs state that they will post to the CAT NMS Plan Web site those materials from DAG discussions that are deemed to be non-confidential information regarding the CAT NMS Plan development and Bidder evaluation process, such as gap analyses regarding the sunsetting of existing regulatory systems.[160] However, the SROs state that not all DAG materials will be posted to the Web site in order to safeguard confidential information and maintain a fair process.[161]

V. Discussion and Commission Findings

After carefully considering the proposed Plan, the issues raised by the comment letters, and the Response Letter, including the commitments contained therein, the Commission has determined to approve the Plan pursuant to Section 11A(a)(3)(B) of the Act[162] and Rule 608,[163] in that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system.[164] Rule 613 mandates that the SROs develop the CAT NMS Plan, and the SROs have voluntarily filed this Plan for the purpose of facilitating that development. The Commission believes the Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the Plan should thereby help promote the goals of investor protection, and fair and orderly markets, by describing the process of developing the CAT NMS Plan, selecting a Plan Processor, and ultimately creating the consolidated audit trail, which will substantially enhance the ability of the SROs and the Commission to oversee today's securities markets and fulfill their responsibilities under the federal securities laws.

The Commission notes that, in response to the comments regarding industry participation in the selection process,[165] the SROs state that the DAG is a valuable source of input for the development of the CAT NMS Plan, and commit to provide the DAG with anonymized information taken from Bids with enough specificity to allow the DAG to understand the comparative advantages and disadvantages of the options being considered so that the DAG can contribute in a meaningful way to the SROs' analysis of Bid information.[166] The SROs also commit to continue to work with the DAG to identify the particular sections of the RFP that will benefit from industry input, and to solicit the views of the DAG and the industry for the required cost-benefit analysis, while adhering to their responsibility to maintain the confidentiality of the Bid submissions.[167] The Commission believes that such an ongoing and open dialogue between the SROs and the DAG during the selection process is appropriate, and will facilitate the drafting of a detailed and thoughtful CAT NMS Plan, as contemplated by Rule 613. The Commission encourages the SROs to consult with and utilize the DAG to inform their decision making processes.

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *See* Response Letter, *supra* note 7, at 7.

[151] *Id.* at 7–8.

[152] *See* FINRA Letter at 4.

[153] *Id.*

[154] *Id* at 4–5.

[155] *See* FIF Letter II at 2.

[156] *Id.*

[157] *See* Response Letter, *supra* note 7, at 8.

[158] *Id.* at 9.

[159] *Id.* at 9.

[160] *Id.*

[161] *Id.*

[162] 15 U.S.C. 78k–1(a)(3)(B).

[163] 17 CFR 242.608. In approving this Plan, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[164] 17 CFR 242.608(b)(2). *See also* 15 U.S.C. 78k–1(a).

[165] *See* SIFMA Letter at 1–5; FINRA Letter at 4; and FIF Letter at 4.

[166] *See* Response Letter, *supra* note 7, at 2–4.

[167] *Id.*

With respect to the comments on the transparency of the selection process,[168] the SROs reiterate their commitment to provide transparency to the industry during the selection process and thereafter, and agree to provide more detailed descriptions of their evaluation criteria in the RFP.[169] The SROs, however, recognize the need to balance full transparency with Bidder concerns about the confidentiality of proprietary information, in addition to more general concerns about inhibiting an open dialogue during the decision-making process. In light of these concerns, the SROs decline to publish the contents of the Bids, the Operating Committee minutes, or the SRO voting results.[170] The Commission believes in the importance of a transparent process with respect to the development of the CAT NMS Plan and to the selection of a Plan Processor, but at the same time recognizes the legitimate concerns of Bidders regarding the confidentiality of proprietary and other sensitive information, and the desire by the SROs to encourage Bidders to provide sufficiently detailed Bids to facilitate the development of a robust CAT NMS Plan. The Commission believes that the SROs have appropriately balanced these competing goals as described above.

To address concerns regarding potential conflicts of interest in the selection process,[171] the SROs included in the Plan multiple provisions that are intended to balance the need for SROs to participate in the process given the important regulatory obligations that exist for each of them with respect to the creation and operation of the CAT, with the potential for conflicts of interest that can arise when an SRO is a Bidding Participant.[172] The Commission believes that the SROs have included reasonable steps to address the concerns about conflicts of interest.

With regard to the issue of when and under what circumstances Bidders should be permitted to revise their Bids, one commenter encourages the SROs to liberalize the proposed Plan's approach to allowing revisions while another commenter suggests that the SROs increase restrictions on the ability of Bidders to revise their Bids.[173] In their Response Letter, the SROs state that they will not modify their proposal to permit each Shortlisted Bidder the opportunity to revise its Bid only if a majority of the Selection Committee believes that revisions by the particular Bidder are ''necessary or appropriate.'' As noted above, the SROs believe that without SRO discretion to determine which Bidders can revise their Bids, Bidders may not provide detailed information in their initial Bids, but will await the final structure of the CAT NMS Plan to provide full information in their revised Bids.[174] The Commission believes that the SROs' approach is reasonably designed to help assure that the SROs receive sufficiently detailed information to develop the CAT NMS Plan.

With respect to the comments raised by a commenter relating to the due date for Bids [175] (four weeks after Commission approval of the Selection NMS Plan), the Commission notes that the SROs explain that the timeframe is based on the current requirement to submit the CAT NMS Plan by September 30, 2014, and note that, if the approved Plan has a material impact on the Bidders' ability to respond to the RFP, then the SROs may extend this date.[176] Regarding the comments made by another commenter relating to the two-month period for the selection of the Plan Processor,[177] the Commission notes that this is a deadline imposed by Rule 613(a)(3)(i) [178] and that the SROs state that they hope to meet this deadline but will continue to evaluate whether, and, if so, how much, additional time may be required, and will seek additional time from the Commission for the selection of the Plan Processor if needed.[179]

With respect to the comment regarding the quorum requirement for Selection Committee meetings,[180] the Commission notes that the SROs state that they will ensure that all Voting Senior Officers will be in attendance for all voting processes as part of the Plan Processor selection, either in person or telephonically.[181] With respect to the concerns regarding information sharing,[182] the Commission notes that, in addition to requiring NDAs, the SROs have indicated that no member of the Advisory Committee or the DAG will be permitted to have affiliations with Bidding entities, unless such members have functional separation between their representatives on the DAG and their representatives involved with entities preparing or participating in a Bid.[183]

The Commission finds that the Plan is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system and that it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. Accordingly, the Commission expects that the Participants will implement the Plan as described, and complete the evaluation of the Bids and submission of the CAT NMS Plan as required by Rule 613.[184]

VI. Conclusion

It is therefore ordered, pursuant to Sections 11A of the Act,[185] and the rules thereunder, that the Plan (File No. 4–668) is approved and declared effective, and the Participants are authorized to act jointly to implement the Plan as a means of facilitating a national market system.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04240 Filed 2–26–14; 8:45 am]

BILLING CODE 8011–01–P

[168] *See* FINRA Letter at 1–2; SIFMA Letter at 1–3; FIF Letter at 2–3.

[169] *See* Response Letter, *supra* note 7, at 4–5.

[170] *Id.* at 9–10. The Commission further notes that keeping voting information non-public can help address conflicts of interest by limiting the ability of outsiders to observe and reward certain voting behavior.

[171] *See* Anonymous 1 Letter at 1; Anonymous 2 Letter at 1.

[172] *See* Response Letter, *supra* note 7, at 7.

[173] *See* FIF Letter at 4; FINRA Letter at 2–3.

[174] *See* Response Letter, *supra* note 7, at 6.

[175] *See* Anonymous 2 Letter at 1.

[176] *See* Response Letter, *supra* note 7, at 11–12.

[177] *See* FIF Letter at 5.

[178] *See* Response Letter, *supra* note 7, at 11.

[179] *Id.*

[180] *See* FIF Letter at 2.

[181] *See* Response Letter, *supra* note 7, at 7.

[182] *See* FINRA Letter at 4–5.

[183] *See* Response Letter, *supra* note 7, at 9.

[184] Rule 613(a)(1) required the SROs to file the CAT NMS Plan 270 days from the date of publication of the Adopting Release in the **Federal Register**. *See* 17 CFR 242.613(a)(1). The Adopting Released was published on August 1, 2012, thus establishing April 28, 2013 as the initial deadline for the submission of the CAT NMS Plan. *See* Adopting Release, *supra* note 8. Since April 28, 2013, was a Sunday, in accordance with Rule 160(a) of the Commission's Rules of Practice, the deadline for filing the CAT NMS plan was Monday, April 29, 2013. On March 7, 2013, the Commission granted a request from the SROs for a temporary exemption from this deadline until December 6, 2013. *See* Securities Exchange Act Release No. 69060, 78 FR 15771 (March 12, 2013); and letter to Elizabeth M. Murphy, Secretary, Commission, from Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, dated February 7, 2013. On December 6, 2013, the Commission granted a second request from the SROs for a temporary exemption from the new deadline until September 30, 2014. *See* Securities Exchange Act Release No. 71018, 78 FR 75669 (December 12, 2013); and letter to Elizabeth M. Murphy, Secretary, Commission, from Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, dated November 7, 2013.

[185] 15 U.S.C. 78k–1.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [79 FR 10578, February 25, 2014].

STATUS: Closed Meeting.

PLACE: 100 F Street NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, February 27, 2014 at 2:00 p.m.

CHANGE IN THE MEETING: Time Change.

The Closed Meeting scheduled for Thursday, February 27, 2014 at 2:00 p.m. has been changed to Thursday, February 27, 2014 at 11:00 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: February 25, 2014.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2014–04396 Filed 2–25–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71598; File No. SR–MSRB–2013–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to a New MSRB Rule G–45, on Reporting of Information on Municipal Fund Securities

February 21, 2014.

I. Introduction

On June 10, 2013, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of (1) MSRB Rule G–45 (reporting of information on municipal fund securities), (2) MSRB Form G–45, (3) amendments to MSRB Rule G–8 (books and records), and (4) MSRB Rule G–9 (preservation of records). The proposed rule change was published for comment in the **Federal Register** on June 28, 2013.[3]

The Commission initially received five comment letters on the proposal.[4] On August 9, 2013, the MSRB granted an extension of time, until September 26, 2013, for the Commission to act on the filing. On September 26, 2013, the Commission instituted proceedings to determine whether to disapprove the proposed rule change.[5] In response to the Order Instituting Proceedings, the Commission received four additional comment letters on the proposal.[6] On December 19, 2013, the Commission extended the time period for Commission action to February 23, 2014.[7] On January 14, 2014, the MSRB submitted a response to the comment letters[8] and filed Amendment No. 1 to the proposed rule change.[9] The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

The MSRB's Electronic Municipal Market Access (''EMMA'') system currently serves as a centralized venue for the submission by underwriters of 529 plan primary offering disclosure documents (''plan disclosure documents'') and continuing disclosures, such as annual financial reports submitted by issuers or their agents. The MSRB, however, does not currently receive detailed underwriting or transaction information as it does for other types of municipal securities. According to the MSRB, the proposed rule change will, for the first time, provide the MSRB with more comprehensive information regarding 529 plans underwritten by brokers, dealers, or municipal securities dealers by gathering data directly from such persons.

The MSRB proposes to adopt Rule G–45. Rule G–45 will require each underwriter of a primary offering of municipal fund securities [10] (excluding interests in local government

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69835 (June 24, 2013), 78 FR 39048 (''Notice'').

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated July 16, 2013 (''ICI Letter''); David L. Cohen, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, dated July 18, 2013 (''SIFMA Letter''); Roger Michaud, Chairman, College Savings Foundation, dated July 19, 2013 (''CSF Letter''); Michael L. Fitzgerald, Chairman, College Savings Plans Network, dated July 19, 2013 (''CSPN Letter''); and Michael B. Koffler, Partner, Sutherland Asbill & Brennan, dated July 19, 2013 (''Sutherland Letter'').

[5] Securities Exchange Act Release No. 70531 (Sept. 26, 2013), 78 FR 60985 (Oct. 2, 2013) (''Order Instituting Proceedings'').

[6] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated November 8, 2013 (''ICI Letter II''); Roger Michaud, Chairman, College Savings Foundation, dated November 18, 2013 (''CSF Letter II''); Michael L. Fitzgerald, Chairman, College Savings Plans Network, dated November 18, 2013 (''CSPN Letter II''); and Michael B. Koffler, Partner, Sutherland Asbill & Brennan, dated November 18, 2013 (''Sutherland Letter II'').

[7] Securities Exchange Act Release No. 71144 (December 19, 2013), 78 FR 78451 (December 26, 2013).

[8] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Lawrence P. Sandor, Deputy General Counsel, MSRB, dated January 14, 2014 (''MSRB Response Letter'').

[9] Amendment No. 1 has been placed in the public comment file for SR–MSRB–2013–04 at *http://www.sec.gov/comments/sr-msrb-2013-04/msrb201304-11.pdf* (*see* letter from Lawrence P. Sandor, Deputy General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, Commission, dated January 14, 2014). In Amendment No. 1, the MSRB amended and restated the original proposed rule change to: (i) Clarify that the information submitted by underwriters includes asset allocation information for the assets of each investment option; (ii) omit statements concerning the interpretation of the meaning of ''underwriter'' under the federal securities laws and rules thereunder; (iii) clarify that each entity must determine, based on the facts and circumstances, whether it is an underwriter under the federal securities laws; (iv) revise the rule text to clarify that an underwriter that submits Form G–45 would be obligated to submit information only for itself and those entities that identify themselves as underwriters of the 529 plan and aggregate their information with the submitter's information; (v) clarify that underwriters must identify the percentage of each underlying investment in an investment option but not submit information regarding the assets in each underlying investment; (vi) clarify that, for each investment option offered by a 529 plan, the underwriter will provide the MSRB with the name and allocation percentage of each underlying investment in each investment option as of the end of the most recent semi-annual period; (vii) clarify that the MSRB does not contemplate that a state sponsor of a 529 plan, as an instrumentality of the state, would be an underwriter under federal securities laws; (viii) explain that an underwriter would not be required to submit information on Form G–45 that it neither possesses nor has the legal right to obtain; (ix) explain that, to the extent the information submitted was prepared by the underwriter or, through delegation, one of its contractors or sub-contractors, and the information was inaccurate or incomplete, the underwriter would be responsible for the information and therefore be liable for such information under proposed Rule G–45; and (x) clarify in Rule G–45 that performance data shall be reported annually. The MSRB also clarified various aspects of how the information should be reported on Form G–45.

[10] The term ''municipal fund security'' is defined in MSRB Rule D–12 to mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940. Interests in 529 plans are the only type of municipal fund security that will be covered by the proposed rule change.

investment pools) to report on Form G–45 information relating to such offering by no later than 60 days following the end of each semi-annual reporting period ending on June 30 and December 31.[11] In addition, the MSRB proposes to require that performance data be submitted annually by no later than 60 days following the end of the reporting period ending on December 31.[12] The proposal also requires disclosure regarding plan descriptive information, asset allocation information, contributions, withdrawals, fee and cost structure, performance data, and other information.[13]

Under proposed Rule G–45, brokers, dealers, or municipal securities dealers that are underwriters under Rule 15c2–12(f)(8) of the Act will have the obligation to submit the requested information.[14] The MSRB notes that there may be more than one underwriter in a particular primary offering but will deem the reporting obligation fulfilled if any one of the underwriters submits the required information. Accordingly, on Form G–45, each submitter could provide the names of each underwriter that has identified itself as such and on whose behalf the information is submitted.[15]

The MSRB states that it will permit the performance, fee, and expense information to be submitted in a format consistent with the College Savings Plans Network's (''CSPN'') published Disclosure Principles Statement No. 5 (''Disclosure Principles''), which commenters informed the MSRB is the industry norm for reporting such information.

Lastly, the MSRB proposes to amend its books and records rules under Rules G–8 and G–9. The amended rules will require underwriters to maintain the information required to be reported on new Form G–45 for six years.

[11] The proposed rule change will require an underwriter to report such information in the manner prescribed in the Form G–45 procedures and as set forth in the Form G–45 Manual. The MSRB states that the Form G–45 Manual will be a new manual created to assist persons in the submission of the information required under proposed Rule G–45 and will contain only the technical requirements for submitting such information. As such, this manual is not part of the proposed rule change. *See* Amendment No. 1.

[12] *See* Amendment No. 1.

[13] For more details on the specific requirements of the proposal, *see* Notice *supra* note 3.

[14] 17 CFR 240.15c2–12(f)(8).

[15] The MSRB has stated that the underwriter will be obligated to submit information only for itself and those entities that identify themselves as underwriters of the plan and agree to aggregate their information with the information of the submitter. *See* Amendment No. 1.

III. Summary of Comments Received and the MSRB's Response

As noted above, the Commission has received a total of nine comment letters on the proposed rule change.[16] Four of the commenters expressed general support for the MSRB's desire to collect more comprehensive information relating to 529 plans.[17] However, all of the commenters raised concerns or sought clarification about certain specific aspects of the proposal, including: (i) The scope of the definition of ''underwriter''; [18] (ii) the disclosure obligations of underwriters, including their ability to obtain, and verify the accuracy of, the requested information; [19] (iii) the need for publication of the Form G–45 Manual; [20] (iv) the MSRB's plans to publicly disseminate information filed on Form G–45; [21] (v) the regulatory basis for the proposed rule change and value of the requested information on Form G–45; [22] and (vi) the statutory basis for the proposed rule change.[23] Further, some commenters argued that the MSRB should analyze the costs and benefits associated with the proposed rule change.[24] Finally, some commenters requested certain modifications to the content of Form G–45.[25]

A. Definition of ''Underwriter''

Several commenters objected to the MSRB's interpretation of the term ''underwriter'' as used in Rule G–45 and stated that the MSRB should clarify the scope of the definition.[26] These commenters cited the MSRB's statements in the Notice suggesting that 529 plans may have multiple underwriters; that Rule 15c2–12(f)(8) under the Act, which the MSRB incorporates into Rule G–45, defines ''underwriter'' broadly; and that other entities (in addition to primary distributors) involved in operating or maintaining a plan, such as the plan's program manager, their affiliates and/or contractors, could be deemed underwriters for purposes of the rule. One commenter [27] asserted that 529 plans typically have only one underwriter [28] and argued, along with other concurring commenters,[29] that many other entities involved in operating and maintaining a plan, such as the plan's program manager, recordkeeper, investment manager, custodian, and state sponsor, in most cases, would not and should not be underwriters for purposes of Rule G–45.

Several commenters emphasized that, to fall within the definition of ''underwriter'' under Rule G–45, a person or entity must be a broker, dealer, or municipal securities dealer.[30] One commenter argued that a plan's program manager, recordkeeper, investment manager, custodian, and state sponsor generally are not brokers or dealers and therefore would not qualify as underwriters.[31] Accordingly, this commenter requested that the MSRB clarify that the term ''underwriter'' would not include such entities if they provide services to the plan on behalf of the plan or its state sponsor.

Two commenters also specifically argued that for purposes of Rule G–45 a state sponsor should not be treated as an underwriter, as they are not brokers, dealers, or municipal securities dealers.[32] These commenters stated that language in the Notice implied that state sponsors could be deemed underwriters and thus requested confirmation that proposed Rule G–45 would not apply to municipal securities issuers exempted under Section 3(d) of the Act.

Although not directly discussing the definition of ''underwriter,'' one commenter argued that the proposed rule and form should not apply to ''direct-sold'' plans because, by definition, such plans are sold without the involvement of a broker-dealer.[33] This commenter stated that the distinction between ''direct-sold'' and ''advisor-sold'' plans is not simply a ''marketing distinction,'' as the MSRB had categorized it in the Notice, but is ''critical in assessing the MSRB's jurisdiction as it delineates between

[16] *See supra* notes 4 and 6.

[17] *See* ICI Letter, ICI Letter II, SIFMA Letter, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II.

[18] *See* ICI Letter, ICI Letter II, SIFMA Letter, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II. One commenter also questioned the MSRB's interpretation of ''direct-sold'' versus ''advisor-sold'' plans in relation to the scope of the rule and its application to underwriters. *See* Sutherland Letter, Sutherland Letter II.

[19] *See* ICI Letter, ICI Letter II, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II.

[20] *See* ICI Letter, ICI Letter II, SIFMA Letter.

[21] *See* ICI Letter, ICI Letter II, SIFMA Letter, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II.

[22] *See* Sutherland Letter, Sutherland Letter II.

[23] *See* ICI Letter II, Sutherland Letter II, CSPN Letter II, CSF Letter II.

[24] *See* CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II, Sutherland Letter, Sutherland Letter II, ICI Letter II.

[25] *See* ICI Letter, ICI Letter II, SIFMA Letter, Sutherland Letter, Sutherland Letter II.

[26] *See* ICI Letter, ICI Letter II, SIFMA Letter, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II.

[27] *See* ICI Letter, ICI Letter II.

[28] *See* ICI Letter.

[29] *See* SIFMA Letter, CSPN Letter, and CSF Letter, which stated that they concur and/or endorse ICI's comment.

[30] *See* CSPN Letter, CSF Letter, ICI Letter.

[31] *See* ICI Letter.

[32] *See* CSPN Letter, CSF Letter.

[33] *See* Sutherland Letter, Sutherland Letter II.

those 529 [p]lans that are sold through broker-dealers and those that are not.'' [34] Accordingly, this commenter concluded that ''direct-sold'' plans are not subject to the MSRB's jurisdiction.

Finally, one commenter expressed opposition to the imposition of the reporting requirements of the proposed Rule G–45 on ''broker dealers that are not underwriters but that instead have entered into contracts with the plan's underwriter (primary distributor) to sell plan shares to retail investors.'' [35]

In response to some commenters' assertions that many entities involved in operating and maintaining a 529 plan are not acting as brokers, dealers or municipal securities dealers and thus cannot be underwriters for purposes of the rule, the MSRB stated that, depending on its activities, program managers and other plan providers might be ''brokers'' under Section 3(a)(4)(A) of the Act.[36] In this regard, the MSRB discussed its understanding of the 529 plan administration and noted that it believed the activities of program managers may extend beyond investment management to other administrative activities.

The MSRB also disagreed that 529 plan underwriters are limited to primary distributors. The MSRB stated that Rule G–45 incorporates and should be interpreted in the same manner as the definition of ''underwriter'' in Rule 15c2–12(f)(8) under the Act. The MSRB stated that the determination of whether a firm is an underwriter depends on the ''facts and circumstances, including the activities the firm performs to assist in the distribution of municipal securities, rather than the firm's status or common industry labels.'' [37] Thus, the MSRB stated that, if an entity is a dealer and an underwriter as defined by the Act, it will be required to submit information on Form G–45. The MSRB also noted that the ''potential pool of brokers or dealers is not necessarily limited to existing registrants but would encompass all firms that should be registered as such.'' [38]

The MSRB also clarified that it does not seek to impose reporting requirements on state sponsors or selling dealers. With regard to selling dealers, the MSRB stated that the proposal is ''clear that no such obligation would be imposed on so-called advisor-sold plan selling dealers that are not underwriters.'' [39] The MSRB also represented that it does not contemplate that a state sponsor of a 529 plan, as an instrumentality of the state, would be an underwriter pursuant to the ''plain language'' of Rule 15c2–12 under the Act.

With regard to one commenter's argument that the proposed rule should not apply to ''direct sold'' plans as distinguished from ''advisor sold'' plans, the MSRB stated that its ''rules apply to dealers in their municipal fund securities activities, including their underwriting activities, regardless of the business model or marketing strategy involved.'' [40] Each entity must determine, based on the facts and circumstances surrounding its own activities, if it meets the Act's definitions of broker or dealer and underwriter. The MSRB stated that its rulemaking authority is not dependent on whether a firm provides investment advice to customers in conjunction with municipal securities underwriting services.[41]

B. Underwriter Reporting Obligation

All five commenters believed the MSRB should clarify the disclosure obligations of underwriters.[42] Four of these commenters stated that the MSRB is seeking information that many primary distributors will not be able to provide.[43] All of the commenters suggested that the MSRB clarify or confirm that underwriters would not be responsible for certain information that is outside of their possession, custody, or control. For example, one commenter requested that the MSRB clarify that, when an underwriter, in its normal course of business, does not create, own, control, or possess information necessary for Form G–45, the underwriter will not be required to obtain such information.[44] Another commenter requested that the MSRB clarify that an underwriter is required to provide the requisite information only to the extent such information relates to the distribution by the underwriter of municipal fund securities and is in the underwriter's possession or maintained by another entity on the underwriter's behalf for purposes of complying with MSRB rules.[45]

Several commenters raised concerns that contractual provisions or privacy laws might not permit an underwriter to obtain the information required by the proposed rule and form.[46] In this regard, one commenter sought confirmation that, where the sharing of information between an underwriter and a recordkeeper would violate contractual provisions, the information would be deemed to be outside of the possession or control of the underwriter and not subject to the reporting obligations of Rule G–45.[47] Another commenter noted that, in the context of omnibus agreements, whether the required information is available to an underwriter is dependent on comprehensive servicing agreements between the plan, the underwriter, and the selling dealers.[48] Thus, this commenter noted that the agreements may not provide the underwriter with legal access to certain information and, as such, an underwriter should not be required to report such information on Form G–45.

Two commenters raised concerns about the MSRB's suggestion that an underwriter's disclosure obligation extends to ''information in the possession of an underwriter's subcontractor.'' [49] These commenters believed this suggestion ''will produce confusion and disparate reporting results'' depending on factors unrelated to Rule G–45 regulatory compliance.[50] In particular, the commenters noted that, while some information may be in the possession of an underwriter's ''subcontractor,'' other information may be in the possession of an unaffiliated or affiliated entity that is not a subcontractor, and privacy laws and contractual requirements may apply differently.

One commenter questioned the meaning of the MSRB's statement in the Notice that underwriters would be required to produce only information that they possess or ''have a legal right to obtain.'' [51] The commenter stated that ''unless the primary distributor has a specific, enforceable legal right, such as one existing under law (such as a right created by a statutory provision) or arising from a specific contractual

[34] *See* Sutherland Letter.

[35] *See* SIFMA Letter.

[36] *See* MSRB Response Letter. Section 3(a)(4)(A) of the Act defines a ''broker'' as any person engaged in the business of effecting transactions in securities for the account of others.

[37] *See* MSRB Response Letter.

[38] See MSRB Response Letter.

[39] *See* MSRB Response Letter.

[40] *See* MSRB Response Letter.

[41] The MSRB added that, based on its experience in this area, it believes that it is common for a program manager to contract with the trustee of a plan to provide administrative, marketing, and other services on behalf of the plan and that the entities hired by the trustee are essential to the undertaking, which includes soliciting municipal fund securities transactions and handling customer funds and municipal fund securities.

[42] *See* ICI Letter, ICI Letter II, SIFMA Letter, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II, Sutherland Letter, Sutherland Letter II.

[43] *See* ICI Letter, CSPN Letter, CSF Letter, Sutherland Letter.

[44] *See* ICI Letter.

[45] *See* CSPN Letter.

[46] *See* CSF Letter, CSPN Letter, SIFMA Letter, Sutherland Letter.

[47] *See* Sutherland Letter.

[48] *See* SIFMA Letter.

[49] *See* CSPN Letter, CSF Letter.

[50] *See* CSPN Letter, CSF Letter.

[51] *See* Sutherland Letter.

provision, to obtain specified information maintained by a third party, the primary distributor does not have a legal right to obtain the information for purposes of the proposal.'' [52] As such, the commenter asserted that an underwriter may not be able to provide information in the possession of an underwriter's subcontractor.

Two commenters also provided comments relating specifically to omnibus accounts, stating that Rule G–45 and Form G–45 should recognize that, to the extent an underwriter does not, in the normal course of business, have access to information on the accounts underlying an omnibus accounting arrangement, the underwriter should not be required to report such information.[53] These commenters also stated that, ''in practice, the mere fact that there is an omnibus relationship between a selling dealer and a plan's underwriter does not necessarily mean the underwriter has full transparency into all account information, including account owners, beneficiaries, contributions, and withdrawals, underlying the omnibus account.'' [54]

Lastly, two commenters contended that, if the underwriter is able to obtain the required information from a third party, the MSRB should clarify that the underwriter is not responsible for ensuring the accuracy or completeness of the information before including it on Form G–45.[55]

In response, the MSRB reaffirmed that the proposal would require an underwriter of a 529 plan to submit only information it possesses or has a legal right to obtain. In this regard, the MSRB stated its belief that an underwriter has a legal right to obtain all information that is related to its activities in connection with the underwriting, even where it has designated an affiliate or contractor to perform such activities. The MSRB disagreed with commenters who suggested that, if a contractual provision prohibited the sharing of information, an underwriter should not be responsible for providing such information under Rule G–45 and Form G–45. Specifically, the MSRB stated that the legal right to obtain information for purposes of Rule G–45 is not affected by a ''voluntary relinquishment, by contract or otherwise, of such a right.'' [56] Furthermore, the MSRB stated that, to the extent that information reported in Form G–45 is prepared by the underwriter or one of its contractors or subcontractors, and the information is inaccurate or incomplete, the underwriter would be responsible for the information and therefore be liable for such information under Rule G–45. However, the MSRB explained that if the underwriter did not prepare, or authorize others to prepare on its behalf, information submitted under Rule G–45, it would not be obligated to verify or confirm the accuracy and completeness of the information.

C. Publication of the Form G–45 Manual

Two commenters believed that the MSRB should be required to publish for comment the contents of the Form G–45 Manual (''Manual'') predicting that the Manual would contain important substantive information concerning the reporting obligations under Form G–45.[57] One commenter believed that the ''Manual's contents will not be limited to technical specifications or design or system considerations relating to the mechanics of the electronic filing process.'' [58] This commenter asserted that, apart from the addition of boxes for notes regarding performance data and fee and expense data, neither Form G–45 nor Rule G–45 reflects the MSRB's statements in the Notice that information may be submitted in a manner consistent with the Disclosure Principles. As such, the commenter concluded that the details regarding how to report data consistent with these Disclosure Principles would necessarily have to be set forth in the Manual. Another commenter similarly stated that it believed that the Manual would incorporate the detailed substantive instructions of the Disclosure Principles.[59] Both commenters also suggested that the one-year implementation period should commence after the Manual has been published for comment and approved by the Commission.[60]

In response, the MSRB represented that the Manual will only provide ''technical requirements to facilitate the submission of information required by proposed Rule G–45 and Form G–45.'' [61] For example, the Manual will most likely include both instructions on how to upload bulk data to the MSRB's system and instructions on data entry through the MSRB's interface. Because the content of the Manual is dependent on ''system architecture'' which is dependent on the scope of the proposed rule change, the MSRB stated that submission of the Form G–45 Manual as part of a proposed rule change would ''unreasonably retard systems development.'' [62] Moreover, the MSRB indicated that the ''data elements required to be submitted by 529 plan underwriters are specified in the proposed rule change and need not be the subject of an additional, separate filing.'' [63] Finally, the MSRB stated that the proposed implementation period of not earlier than one year from the date of Commission approval of the current proposed rule change is sufficient time for market participants to prepare to comply with Rule G–45.

D. Publication of the G–45 Data

Three commenters believed that confidential or proprietary information reported on Form G–45 should not be made available to the general public.[64] One commenter, for example, stated that the data collected pursuant to Rule G–45 ''should be used to inform the MSRB's regulatory initiatives and priorities and not to compete with other more mature, robust, and comprehensive public sources of information on 529 plans.'' [65] Another commenter stated that the MSRB should be required to file a proposed rule change subject to Commission approval before the MSRB publicly disseminate certain 529 plan data reported on Form G–45.[66]

In response, the MSRB reiterated that it would publicly disseminate the information collected on Form G–45 only after the approval of a separate proposed rule change by the Commission. The MSRB confirmed that, at this time, it does not intend to disseminate through EMMA the information collected under the proposal and that such information would be used only for regulatory purposes.

E. Regulatory Value of Required Information and Regulatory Basis for the Proposal

Two commenters suggested that the proposed rule change fails to satisfy the requirements of Section 15B(b)(2)(C) of the Act.[67] In particular, one commenter

[52] *See* Sutherland Letter.

[53] *See* ICI Letter, SIFMA Letter.

[54] *See* ICI Letter, SIFMA Letter.

[55] *See* ICI Letter, Sutherland Letter, Sutherland Letter II.

[56] *See* MSRB Response Letter.

[57] *See* ICI Letter, ICI Letter II, SIFMA Letter.

[58] *See* ICI Letter.

[59] *See* SIFMA Letter. This commenter noted that, while the MSRB explained in the Notice that the information required on Form G–45 will be reported consistently with the reporting formats under the Disclosure Principles, proposed Rule G–45 and Form G–45 are silent on this point.

[60] *See* ICI Letter, SIFMA Letter.

[61] *See* MSRB Response Letter.

[62] *See* MSRB Response Letter.

[63] *See* MSRB Response Letter.

[64] *See* ICI Letter, ICI Letter II, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II.

[65] *See* ICI Letter.

[66] *See* SIFMA Letter.

[67] *See* Sutherland Letter II, ICI Letter II.

questioned how the information to be collected would help the MSRB, FINRA and the Commission protect investors and the public interest.[68] The other commenter added that the information collected on Form G–45 would not assist the MSRB in preventing fraud, promoting just and equitable principles of trade, fostering industry cooperation, or removing market impediments in the 529 plan market.

The commenter further asserted that the requested information would be substantially incomplete because the information obtained would not include data on ''direct-sold'' 529 plans, which the commenter stated represents more than half of the assets in the 529 plan industry. The commenter also noted that certain information is already publicly available and includes both ''broker-sold'' and ''direct-sold'' plans.

Finally, the commenter argued that the MSRB's jurisdiction does not extend to regulating the 529 plan market because the MSRB's regulatory authority is limited to regulating broker-dealers that distribute and sell municipal securities.[69] The commenter also suggested that the MSRB does not have the legal authority or jurisdiction to mandate disclosure of underlying investments because they are not municipal securities.

Two commenters also stated that disclosure of information pertaining to the underlying investments is beyond what is required by the Disclosure Principles.[70] Moreover, one commenter recommended that, if the MSRB determines in the future that there would be regulatory value in having this information, the MSRB should revise Form G–45 at that time.[71]

In response to the commenter's questions regarding the regulatory authority for the proposal, the MSRB pointed to Section 15B(b)(2) of the Act, which ''authorizes the MSRB to adopt rules to effect the purpose of the Exchange Act concerning transactions in municipal securities effected by dealers.'' [72] The MSRB represented that interests in 529 plans are considered to be municipal securities and that the MSRB has categorized such interests as municipal fund securities. The MSRB also stated that its rules ''govern the activities of dealers that effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal fund security'' and such dealers engaging in these activities are subject to the MSRB's rulemaking authority.[73]

Moreover, the MSRB argued that the proposal is consistent with the Act because the requested information will enhance its understanding of 529 plans and ''assist the Board in evaluating whether its regulatory scheme for 529 plans is sufficient, or whether additional rulemaking is necessary to protect investors.'' [74] The MSRB stated that the information will allow regulators to compare asset allocation, performance, and fee information across plans and against plan disclosures and marketing material. This information will help regulators protect investors and prevent fraudulent and misleading statements in plan disclosure documents and advertising. The information will inform its rulemaking regarding disclosures and advertising and will help ''identify industry trends and anomalies'' and assist regulators prioritize their efforts with respect to 529 plans, including the nature and timing of risk-based dealer examinations.[75]

The MSRB also observed that the information required under the proposal is easily obtainable by underwriters because it is often disclosed in 529 plan offering documents.[76] The MSRB also noted that Form G–45 only requires the name of the investment product (typically a mutual fund) and the allocation percentage of each product in the investment option.

Finally, the MSRB recognized that while some of the requested information is available publicly, there is no legal requirement to reliably produce the information and it is not currently available in an electronic format that lends itself to analysis.

F. Contents of Form G–45

Some commenters provided suggestions for modifications to the specific information requested by Form G–45 or sought clarification on how to report certain information on the form, as discussed below.[77] In response, the MSRB stated generally that it believed that proposed Form G–45 was clear and specific. However, in response, the MSRB also provided some additional detail and clarification, as described below.

i. Investment Option Information

One commenter requested that the MSRB clarify how to report in Form G–45 an investment option that is used for multiple purposes.[78] This commenter also recommended that the MSRB clarify how underwriters should report fee, expense, and performance information for a mutual fund that issues multiple classes of shares with fees and expenses that vary from class to class. Another commenter questioned how underwriters are supposed to report asset class and asset class percentages and suggested that the two items related to asset class be eliminated.[79] This commenter asserted that investment options do not have or invest in asset classes, thus the use of the phrase ''asset classes in investment option'' is unclear.[80]

One commenter also recommended that the investment option information be reported in ranges rather than precise amounts, where appropriate (*e.g.,* asset class allocation percentages), because the use of ranges would relieve underwriters of having to revise previously reported information whenever there is a *de minimus* change.[81] This commenter further suggested that, if the MSRB elects not to use ranges, it should consider revising the rule such that an update is not required to previously reported information unless there has been more than a *de minimus* change.

In response, the MSRB affirmed that Form G–45 requires disclosure at the investment option level only and each investment option would report its underlying investments separately.[82] The MSRB asserted that 529 plans routinely track investments at both the underlying investment and investment option level and therefore should have little difficulty in reporting this information. The MSRB explained that, for example, if an investment option invests in five mutual funds, the submitter would disclose those five funds and the allocation percentage of each in the investment option. The MSRB also clarified that an underwriter must identify the assets held by each investment option separately, even if

[68] *See* Sutherland Letter, Sutherland Letter II.

[69] This commenter also objected to the MSRB's request for information on Form G–45 related to plan fees and expenses. The commenter suggested that because the MSRB does not have jurisdiction over the regulation of 529 plans, it should not require primary distributors to submit data concerning securities product fees that are unrelated to the primary distributor.

[70] *See* ICI Letter, SIFMA Letter.

[71] *See* ICI Letter.

[72] *See* MSRB Response Letter.

[73] *See* MSRB Response Letter.

[74] *See* MSRB Response Letter.

[75] *See* MSRB Response Letter.

[76] The MSRB provided that, for example, the Texas direct-sold 529 plan's offering document contains information about underlying investments.

[77] *See* ICI Letter, Sutherland Letter, Sutherland Letter II, SIFMA Letter.

[78] *See* ICI Letter.

[79] *See* Sutherland Letter.

[80] *See* Sutherland Letter.

[81] *See* ICI Letter.

[82] The MSRB further confirmed that a fund that is both an underlying investment and a stand-alone investment option would not be aggregated. Rather, data would be reported for each investment option.

another investment option invested in the same funds.

Likewise, with regard to commenters' concerns regarding asset class information, the MSRB represented that data on asset class and asset class percentages are readily available and already presented in certain plan documents. The MSRB also stated that, with regard to investment options that are a mutual fund with multiple share classes, Form G–45 includes fields for fees and charges related to each share class.

The MSRB also disagreed with the request that information be reported in ranges rather than precise amounts, stating that ''precision is needed regarding asset allocations.'' [83] The MSRB also noted that this information is readily available to underwriters. Further, the MSRB disagreed with the request that, alternatively, it should require the submission of updates only where there is more than a *de minimus* change, stating that defining ''de minimus'' could pose problems because even a small change in the information reported could be material.

ii. Performance Information

One commenter raised several issues with respect to performance information and provided the following specific recommendations: (i) Resolve a discrepancy between the definition of ''performance'' in Rule G–45(d)(viii) (which provides for ''total returns of the investment option expressed as a percentage net of all generally applicable fees and costs'') and the requirement in Form G–45 (which requires that performance be reported both ''including sale charges'' and ''excluding sales charges''); (ii) clarify whether a plan that is directly distributed and that has no ''sales charges'' is expected to report the same information under ''Investment Performance (Including Sales Charges)'' and ''Investment Performance (Excluding Sales Charges)'' or just the later; (iii) clarify that fees that are not specific to any particular investment option are not required to be included in the performance calculation; (iv) resolve a discrepancy between a statement in the Notice that Form G–45 requires ''performance for the most recent calendar year'' and the Form G–45 requirement for disclosure of each investment option's 1, 3, 5 and 10 year performance, as well as the option's performance since inception; and (v) include a comment box under each of the two sections of Form G–45 relating to Investment Performance to avoid confusion as to whether the comments relate to performance excluding or including a sales charge.[84] Furthermore, this commenter recommended that the MSRB clarify that a 529 plan is only required to report benchmark information if the 529 plan, in fact, uses a benchmark.

In response, the MSRB stated that Form G–45 provides fields for reporting performance including and excluding sales charges. In addition, the MSRB indicated that Rule G–45 defines performance to mean total returns of the investment option expressed as a percentage, net of all generally applicable fees and costs. The MSRB disagreed with the commenter's assertion that there was a discrepancy between the definition of ''performance'' in Rule G–45 and the Form G–45's reporting requirement of performance data, stating that ''Form G–45 is consistent with the CSPN's Disclosure Principles Statement No. 5, which suggests that performance data should be disclosed net of all generally applicable fees and costs and that, for advisor sold plans, total returns should be calculated both including and excluding sales charges.'' [85] Moreover, the MSRB stated that fees that are not specific to any particular investment option would not be applicable. Regarding Form G–45's requirement to report performance for the most recent calendar year, the MSRB stated that performance data must only be updated annually and submitters must disclose each investment option's 1, 3, 5 and 10 year performance as well as the option's performance since inception, as of the annual update. The MSRB also stated that it believed including two investment performance comment boxes is unnecessary because a single comment box for all comments would not likely result in confusion by the submitters. Finally, regarding benchmark performance, the MSRB confirmed that an underwriter of a 529 plan that does not use a benchmark will not be required to report benchmark performance. In such case, the MSRB represented that the Form G–45 Manual will instruct a filer to leave the section of the form blank.

iii. Marketing Channel

One commenter questioned the value of requesting information on the ''marketing channel,'' which the MSRB described to be commonly known as either ''advisor-sold'' or ''direct sold.'' [86] As discussed above, this commenter argued that the requirements of the rule should not apply to ''direct-sold'' plans, since they do not involve a broker-dealer offering the securities. As such, the commenter asserted that only broker-dealers could be required to provide the information about ''advisor-sold'' plans, unless non-broker-dealers also made voluntary filings. Such voluntary filings, the commenter urged, would only cause investor confusion.

In response, the MSRB stated that it believed one or more entities that provide services to ''direct-sold'' plans may be underwriters and nothing in the Act limits the MSRB's rulemaking authority to ''advisor-sold'' plans, as discussed above.

iv. Program Managers

One commenter suggested that all information requests related to program managers should be deleted from Form G–45 because the MSRB lacks jurisdiction ''to seek information about an entity hired by 529 [p]lan trustees to provide services to the plan when neither the issuer nor the entity are regulated by the MSRB.'' [87] The commenter further questioned the relevance of such information to the MSRB's role as a securities regulator of broker-dealers distributing municipal securities.

In addition to what is described above with regard to program managers being subject to the rule, the MSRB stated that program managers ''contract with state sponsors to, in many cases, deliver a variety of services necessary to distribute and sell municipal fund securities.'' [88] Further, program managers ''often provide, directly or through contractors or subcontractors, administrative services, marketing and advertising services, and investor support.'' [89] Moreover, the MSRB stated that information about program managers is frequently found in offering documents and available to the public.

G. Costs and Benefits of the Proposal

Four commenters addressed the costs and benefits of collecting the required information.[90] One commenter stated that, while the MSRB concluded in the Notice that the benefits of its proposal will outweigh the costs, the MSRB failed to quantify either the benefits or the costs.[91] Two commenters suggested that the MSRB should conduct an analysis of the costs and benefits associated with the proposal to be

[83] *See* MSRB Response Letter.

[84] *See* ICI Letter.

[85] *See* MSRB Response Letter.

[86] *See* Sutherland Letter.

[87] *See* Sutherland Letter.

[88] *See* MSRB Response Letter.

[89] *See* MSRB Response Letter.

[90] *See* CSPN Letter, CSF Letter, Sutherland Letter, Sutherland Letter II, ICI Letter II.

[91] *See* Sutherland Letter.

consistent with the MSRB's recently announced *Policy on the Use of Economic Analysis in MSRB Rulemaking* (''Policy'') and to enhance the MSRB's ability to tailor its rules to ensure that its costs and burdens are balanced with its expected benefits.[92] Finally, two commenters suggested that the Commission consider adding a waiver and/or sunset provision designed to mitigate the cost burden of an underwriter's disclosure duty.[93] The two commenters also stated that the addition of ''a waiver application process will allow the affected underwriter to request relief from providing data that is not reasonably practicable to obtain.'' [94] Similarly, these commenters believed a sunset provision could also ''ease the administrative burden to underwriters required to submit information on Form G–45.'' [95] In addition, these commenters suggested that the MSRB reexamine its need to collect each data point after a specified period of time and revise Rule G–45 accordingly in the event the MSRB determines that certain data points are no longer relevant.[96]

In response, the MSRB stated that a waiver or sunset provision is unnecessary because most of the information requested is readily available to underwriters. In addition, the MSRB stated that neither commenter provided data or other specific support for their view that the costs would be sufficiently high to justify a waiver or sunset provision. The MSRB also stated that it made significant changes to the proposal based on industry and public input in order to ease the burden on submitters.

In response to suggestions that the MSRB should conduct an economic analysis of the proposed rule change, the MSRB explained that, although the Policy is not applicable to the proposed rule change because the proposal began prior to the Policy's adoption, the MSRB considered the burdens and benefits of the proposed rule change throughout the rulemaking process consistent with the Policy. Among other things, the MSRB stated that the proposal will enable the MSRB to fulfill its oversight responsibilities over dealers acting as underwriters of 529 plans by providing the MSRB with a consistent set of reliable information about 529 plans. As for costs, the MSRB stated that the main cost of the proposal would likely be the cost to underwriters of conforming to the proposal's reporting requirements. However, the MSRB stated that it expects compliance costs to diminish once underwriters become familiar with the new disclosure format.

The MSRB also stated that it identified both baseline conditions and reasonable alternatives to the proposed rule change. In particular, the MSRB explained that the information currently produced by underwriters on EMMA represents a relevant baseline for market participants in which the requirements of proposed Rule G–45 can be compared. In this regard, the MSRB stated that the benefits of a ''uniform and complete set of reliable information exceeds the benefits derived under the baseline situation in which documents supplied to EMMA or other information supplied to information vendors that is not uniform, is not complete, and may not be reliable.'' [97]

Additionally, the MSRB identified reasonable alternatives to the proposed rule change, including maintaining the current disclosure regime through EMMA or other Web sites, but determined that the type of information collected is inadequate because it is not uniform or complete. Further, the MSRB considered public comments that addressed the potential economic consequences of the proposed rule and modified the proposal to minimize the reporting burden on underwriters. For example, the MSRB stated that it reduced the potential cost to underwriters by, among other things, extending the reporting deadline from thirty days to sixty days after the end of the reporting period, eliminating the reporting of percentage of plan contributions derived from automatic contributions, and conforming the reporting format for fees and performance to the Disclosure Principles. Finally, the MSRB represented that only a limited number of dealers would be obligated to submit information to the MSRB.[98]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by Amendment No. 1, as well as the comment letters received and the MSRB's response. The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.[99] In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[100]

The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act. The Commission agrees with the MSRB that the proposal is intended to protect investors, municipal entities and the public interest and prevent fraudulent and manipulative acts and practices by allowing the MSRB to collect comprehensive, reliable, and consistent electronic data on the 529 plans. In order to fulfill its statutory responsibilities to investors and municipal entities in the context of 529 plans, the Commission believes that it is appropriate for the MSRB to possess basic, reliable information regarding 529 plans, including the underlying investment options. Further, the Commission believes that information collected under the proposed rule change would help the MSRB assess the impact of each 529 plan on the market, evaluate trends and differences among plans, and gain an understanding of the aggregate risk taken by investors by the allocation of assets in each investment option. Such information may also be used to determine the nature and timing of risk-based dealer examinations and thus better position the MSRB to protect investors and the public interest.

In addition, the Commission believes the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices and to protect investors. The proposed rule change could help the MSRB to use the information submitted on Form G–45 to, among other things, determine if the 529 plan disclosure documents or marketing material prepared or reviewed by

[92] *See* Sutherland Letter II, ICI Letter II.

[93] *See* CSPN Letter, CSF Letter.

[94] *See* CSPN Letter, CSF Letter.

[95] *See* CSPN Letter, CSF Letter.

[96] The CSPN Letter and CSF Letter suggested three years.

[97] *See* MSRB Response Letter.

[98] The MSRB states that ''[t]here are over 1600 MSRB registered dealers but only approximately one hundred 529 plans and even fewer underwriters, as certain firms act as underwriters for multiple plans.'' *See* MSRB Response Letter.

[99] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[100] 15 U.S.C. 78*o*–4(b)(2)(C).

underwriters are consistent with the data submitted to the MSRB. The Commission also notes that the MSRB believes that collecting information about activity in 529 plans is necessary to assist the MSRB in evaluating whether its current regulatory scheme for 529 plans is sufficient or whether additional rulemaking is necessary to protect investors and the public interest.

The Commission believes that the MSRB, in its response letter, has adequately addressed issues raised by commenters. Namely, with regard to questions regarding the MSRB's jurisdiction,[101] the Commission agrees that Section 15B(b)(2) of the Act authorizes the MSRB to adopt rules to effect the purpose of the Act concerning transactions in municipal securities effected by dealers.[102] As the MSRB noted in its response letter, the Commission has previously stated that interests in 529 plans are considered to be municipal securities.[103]

With respect to comments regarding the scope of the definition of ''underwriter,'' [104] the Commission believes that the MSRB, in its response letter and Amendment No. 1, reduced potential confusion as to whom the obligations of the rule apply. The Commission also believes that the MSRB alleviated concerns that the terms used in the proposed rule may be interpreted by the MSRB in a manner potentially inconsistent with statutory and Commission rule definitions of ''underwriters'' and ''broker-dealers.'' As noted above, the MSRB represented that Rule G–45 incorporates the Commission's definition of underwriter and the determination of whether a firm is an underwriter turns on the facts and circumstances, including the activities the firm performs to assist in the distribution of municipal securities, rather than the firm's status or common industry labels. The Commission agrees with the MSRB that whether a firm is an underwriter will require an individual analysis of the particular facts.

The Commission also notes that the MSRB, in its response letter, provided further clarity with regard to the reporting obligations of underwriters. Thus, the Commission believes that the MSRB's response will allow respondents to be able to ascertain the scope of their obligations under the proposed rule, including the extent to which they are responsible for providing, and verifying the accuracy of, information not in their possession. Specifically, the MSRB confirmed that the proposal will require an underwriter of a 529 plan to submit only information it possesses or has a legal right to obtain, noting that an underwriter has the legal right to obtain all information that is related to its activities in connection with the underwriting. The MSRB also noted that voluntary relinquishment of the legal right to obtain information for purposes of Rule G–45, such as by contractual provision, would not relieve an underwriter of its responsibility for providing such information.

With respect to comments that the Manual should be published for comment,[105] the MSRB has represented that the Manual will only provide technical requirements to facilitate the submission of information, not substantive information concerning the reporting obligations under Form G–45. Based on the MSRB's representation that the Manual will contain purely technical specifications, such as instructions for data entry, the Commission does not believe that the Manual must submitted as part of the proposed rule change. The Commission notes, however, that should the Manual contain any substantive requirements, it would need to be submitted as part of a proposed rule change pursuant to Section 19(b)(1) of the Act [106] and Rule 19b–4 thereunder.[107]

Finally, the Commission believes that the MSRB has adequately clarified the reporting obligations on Form G–45. In this regard, the MSRB has responded to commenters' specific inquiries regarding how to report certain information on Form G–45 in both the MSRB's response letter and Amendment No 1.[108] Accordingly, the Commission believes that these clarifications should result in more complete and correctly reported data that should allow the MSRB to fulfill its stated regulatory goals of obtaining accurate, reliable, and complete data in order to further assess and carry out its rulemaking responsibilities in this area.

For these reasons, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

[101] *See supra* Section 3.E.

[102] 15 U.S.C. 78*o*–4(b)(2).

[103] *See* Securities Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67468, 67472–73 (November 12, 2013) (stating: ''Interests offered by college savings plans (''529 Savings Plans'') that comply with Section 529 of the Internal Revenue Code [footnote omitted] are another type of municipal security'').

[104] *See supra* Section 3.A.

[105] *See supra* Section 3.C.

[106] 15 U.S.C. 78s(b)(1).

[107] 17 CFR 240.19b–4.

[108] *See supra* Section 3.F.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2013–04 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–MSRB–2013–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2013–04 and should be submitted on or before March 20, 2014.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as

amended by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**. As discussed above, Amendment No. 1 amends and restates the original proposed rule change to: (i) Clarify that the information submitted by underwriters includes asset allocation information for the assets of each investment option; (ii) omit statements concerning the interpretation of the meaning of ''underwriter'' under the federal securities laws; (iii) clarify that each entity must determine, based on the facts and circumstances, whether it is an underwriter under the federal securities laws; (iv) revise the rule text to clarify that an underwriter that submits Form G–45 would be obligated to submit information only for itself and those entities that identify themselves as underwriters of 529 plans and that aggregate their information with the submitter's information; (v) clarify that underwriters identify the percentage of each underlying investment in an investment option but not submit information regarding the assets in each underlying investment; (vi) clarify that, for each investment option offered by a 529 plan, the underwriter will provide the MSRB with the name and allocation percentage of each underlying investment in each investment option as of the end of the most recent semi-annual period; (vii) clarify that the MSRB does not contemplate that a state sponsor of a 529 plan, as an instrumentality of the state, would be an underwriter under federal securities laws; (viii) explain that an underwriter would not be required to submit information on Form G–45 it neither possesses nor has the legal right to obtain; (ix) explain that, to the extent the information submitted on Form G–45 was prepared by the underwriter or, through delegation, one of its contractors or sub-contractors, and the information was inaccurate or incomplete, the underwriter would be responsible for the information and therefore be liable for such information under proposed Rule G–45; and (x) revise the rule text to clarify in Rule G–45 that performance data shall be reported annually. These proposed revisions respond to a number of concerns expressed in the comment letters discussed above. The Commission believes that these revisions provide greater clarity on several aspects of the proposal, such as to whom the obligations of the proposed rule apply and the scope of the information that is required to be submitted by underwriters of 529 plans. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[109] that the proposed rule change (SR–MSRB–2013–04), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[110]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04242 Filed 2–26–14; 8:45 am]

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[109] 15 U.S.C. 78s(b)(2).

[110] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71597; File No. SR–NASDAQ–2014–004]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Exchange Rule 4754 Governing the NASDAQ Closing Cross

February 21, 2014.

I. Introduction

On January 7, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 4754 governing the NASDAQ Closing Cross. The proposed rule change was published for comment in the **Federal Register** on January 14, 2014.[3] The Commission received no comments on the proposal. On February 20, 2014, NASDAQ filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

In its filing with the Commission, the Exchange proposes to amend Exchange Rule 4754 governing the NASDAQ Closing Cross (''Cross''),[5] to modify the operation of the Cross to accommodate changes in market structure triggered by Phase 2 of the National Market System Plan to Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS (''Plan'').[6] The Exchange proposes to create the LULD Closing Cross,[7] which modifies the Cross in circumstances where a Plan Trading Pause is triggered between 3:50 and 4:00 p.m. EST (''LULD Closing Cross'').

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands.[8] The requirements of the Plan are coupled with Trading Pauses, or halts, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). The Commission approved the Plan, as amended, on a one-year pilot basis.[9] The Plan first became operational in April of 2013, with a staged rollout with respect to the portion of the trading day to which the Plan applies as well as the securities subject to the Plan. All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan. The Exchange is a Participant in the Plan.

As currently implemented, the Plan applies to securities between 9:30 a.m. and 3:45 p.m. E.T. each trading day. In the near future, the operation of the Plan will be extended to include the time between 3:45 p.m. and 4:00 p.m. E.T.,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71254 (January 8, 2014), 79 FR 2493 (''Notice'').

[4] In Amendment No. 1, NASDAQ amended the proposal: (i) To clarify that an additional tie-breaker will apply to selecting the execution price of the LULD Closing Cross (defined below); (ii) to describe the treatment of IO orders (defined below) prior to the determination of the execution price; (iii) to make a change the type of information that will be disseminated during a Trading Pause prior to the end of regular trading hours; (iv) to describe its rationale for the time-based execution priority method currently employed in the case of a trading halt; and, (v) to clarify that new market orders may be entered during an LULD Trading Pause, but only until 4:00 p.m.

[5] ''Nasdaq Closing Cross'' shall mean the process for determining the price at which orders shall be executed at the close and for executing those orders. *See* Exchange Rule 4754.

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility).

[7] *See* proposed rule 4754(b)(6).

[8] Unless otherwise specified, capitalized terms used herein are based on the defined terms of the Plan.

[9] *See supra* note 6.

which is the end of regular trading hours on the Exchange and is when the Exchange typically conducts a Closing Cross for each of its listed securities. The Exchange proposes to adopt rules for a LULD Closing Cross in connection with the extension of the Plan to 4:00 p.m. E.T.

The Exchange proposes to add new paragraph (b)(6) to Rule 4754 to govern the operation of the LULD Closing Cross, which will apply to Trading Pauses triggered at or after 3:50 p.m. and before 4:00 p.m.[10] As noted by the Exchange, the LULD Closing Cross will be a hybrid containing elements of the NASDAQ Closing Cross and the NASDAQ Halt Cross.[11] The five significant components to the proposed change, described in further detail below, are: (1) Timing, (2) information dissemination (3) participation of certain order types, (4) execution processing, and (5) re-opening of trading following execution.

A. Timing

For securities halted due to an LULD Trading Pause triggered between 3:50 and 4:00 p.m., NASDAQ will conduct an LULD Closing Cross at 4:00 p.m.[12] For securities paused after 3:55 p.m., the Trading Pause will be shortened to ensure a consistent close at 4:00 p.m., subject to limited exception in the case of extreme volatility described below.[13] Consistent with the Closing Cross, if at 4:00 p.m. there is insufficient trading interest in the NASDAQ system to execute an LULD Closing Cross,[14] NASDAQ will not conduct an LULD Closing Cross in that security.[15] In that case, NASDAQ shall instead use the last sale on NASDAQ as the NASDAQ Official Closing Price (defined in the Exchange's rules) in that security for that trading day, as it does when there is insufficient interest in the Closing Cross.[16]

According to the Exchange, NASDAQ will delay execution of the LULD Closing Cross if the market experiences volatility during the Trading Pause just prior to the time of execution.[17] Specifically, the Exchange notes that if the expected closing price changes more than five percent, or 50 cents, whichever is greater, in the last 15 seconds of the Trading Pause, or if there is a market order imbalance (*e.g.,* there is a greater quantity of shares to buy priced as market orders than total eligible sell interest) preventing the calculation of a cross price, NASDAQ will delay the execution of the LULD Closing Cross.[18] In that case, the LULD Closing Cross will be extended in one-minute increments until such time as sufficient trading interest does exist, the volatility condition is eliminated, and/or the market order imbalance has been eliminated.[19] The above volatility checks will be governed under Rule 4120(c)(7)(C)(1) and 4120(c)(7)(C)(3). If this condition persists until 5:00 p.m., NASDAQ will not conduct an LULD Closing Cross in that security and shall instead use the last-sale on NASDAQ as the NASDAQ Official Closing Price in that security for that trading day.[20] As noted by the Exchange, in the event that the volatility condition persists until 5:00 p.m., all orders will be cancelled back to the entering firms, and after hours trading will begin at 5:00 p.m.[21]

B. Information Dissemination

The change in timing, referenced above, also changes how the Exchange will disseminate the Net Order Imbalance Indicator (''NOII''). According to the Exchange, NASDAQ disseminates the NOII every five seconds from 3:50 p.m. until the close of trading at 4:00 p.m., and it will continue to do so under this proposal.[22] If the LULD Closing Cross is extended beyond 4:00 p.m. due to late volatility or a market order imbalance, NASDAQ will continue to disseminate the NOII every five seconds until the LULD Closing Cross actually occurs or until 5:00 p.m.[23]

The Exchange notes that NOII message during the Trading Pause preceding an LULD Closing Cross will be similar to those disseminated during a standard closing Cross and other halt crosses.[24] Specifically, the Near Clearing Price,[25] Far Clearing Price,[26] and Current Reference Price[27] contained in the NOII will all represent the price at which the LULD Closing Cross would execute should the Cross conclude at that time.[28] The Exchange originally proposed that the NOII would also include the size and side of any shares not currently paired at the Reference Price. Amendment No. 1 proposes to change this provision by requiring dissemination of an indicator for ''market buy'' or ''market sell'' if marketable buy or sell shares would remain unexecuted above or below the Near or Far Clearing Price for the expected LULD Closing Cross, rather than disclosing the size and side of order imbalances, which is consistent with what is currently done in the NASDAQ Halt and IPO Crosses.[29] The Exchange stated this language conforms to the dissemination of indicative pricing information currently set forth in Exchange Rule 4753(a)(2)(E)(iii) and 4754(a)(7)(E)(ii) governing the NASDAQ Halt/IPO Cross and the NASDAQ Closing Cross.[30]

C. Participation of Order Types

The Exchange notes that currently, two sets of orders can participate in the Closing Cross: (1) Orders resting on NASDAQ's continuous book at the time of the Cross, and (2) any ''Special Closing Order'' entered and not cancelled prior to the close.[31] Special Closing Orders, as set forth in NASDAQ Rule 4754, are Market on Close (''MOC''), Limit on Close, (''LOC''), and Imbalance Only (''IO'') orders. Under this proposal, the LULD Closing Cross would include Special Closing Orders,

[10] *See* Notice, *supra* note 3 at 2494.

[11] NASDAQ Halt Cross means the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. *See* Exchange Rule 4753(a)(3)

[12] The LULD Closing Cross will not apply for any security halted by an LULD Trading Pause triggered prior to 3:50 p.m. Specifically, if an LULD Trading Pause is triggered at 3:49:59 and ends at 3:54:59, the stock will open via the standard NASDAQ Halt Cross as specified in the rules toady and then close via the standard NASDAQ Closing Cross at 4:00 p.m. *See id.*

[13] *See id.*

[14] Insufficient trading interest is defined as the lack of any bid interest priced to be marketable against any available offer interest. For example, if the most aggressively priced bid interest is priced at $1.00 and the most aggressively priced offer interest is priced at $5.00, there is insufficient trading interest to execute an LULD Closing Cross. *See id.*

[15] *See* proposed rule 4754(b)(6)(A)(ii).

[16] *See* Notice *supra* note 3 at 2494.

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] *See* proposed rule 4754(b)(6)(A)(iii).

[21] *See* Notice *supra* note 3 at 2494.

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] Far Clearing Price means the price at which both the MOC, LOC, and IO, orders would execute. *See* Exchange Rule 4754(a)(7)(E)(i).

[26] Near Clearing Price means the price at which the MOC, LOC, IO, and Eligible Interest would execute. *See* Exchange Rule 4754(a)(7)(E)(ii).

[27] Current Reference Price means: (i) The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, IO and Close Eligible Interest can be paired; (ii) If more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance; (iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross; (iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination. *See* Exchange Rule 4754(a)(7)(A).

[28] *See* Notice *supra* note 3 at 2494.

[29] *See* Amendment No. 1 to the proposal, *supra* note 4.

[30] *Id.*

[31] *See* Notice *supra* note 3 at 2494.

newly entered orders, and all orders resting on the continuous book.[32]

In the event of an LULD Closing Cross, MOC, LOC and IO intended for the closing cross entered into the system and placed on the book prior to 3:50 p.m. will remain on the book to participate in the LULD Closing Cross and may not be modified or cancelled.[33] Currently, under Rule 4754, MOC and LOC orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting NASDAQ to correct a legitimate error (*e.g.,* side, size, symbol, price or duplication of an order).[34] In addition, currently, MOC and LOC orders cannot be cancelled after 3:55:00 p.m. for any reason.[35]

The Exchange notes that under the proposal, members will be permitted to enter and modify (only to increase the number of shares represented), but not cancel new IO orders up to the time of execution of the LULD Closing Cross.[36] In the original filing, NASDAQ described the treatment of IO Orders after the system determines the execution price of the LULD Closing Cross. However, NASDAQ neglected to describe their treatment prior to that determination, and their impact on the execution price. Specifically, in the case of an LULD Trading Pause prior to the close of trading, prior to the determination of the execution price, IO Orders entered prior to the LULD Closing Cross will be re-priced to one penny above the LULD band price (for sell IOs) or one penny below the LULD price band (for buy IOs) or to the entered price if it is less aggressive than the LULD price band at the time of the LULD Trading Pause.[37]

With respect to continuous book orders resting on the book at the time of the Trading Pause, all such orders eligible to participate in the Cross will remain on the book to participate in the LULD Closing Cross and such orders may be modified or cancelled up until the time the LULD Closing Cross.[38] The Exchange notes that all order times in force eligible to participate in the Cross today will continue to do so in the proposed LULD Closing Cross.[39]

NASDAQ also proposes to permit the entry, modification, and cancellation of additional orders (whether market or limit orders) during the Trading Pause. Specifically, during a Trading Pause that is triggered or extended after 3:50 p.m., members will be permitted to enter, modify, and cancel new market orders up until 4:00 p.m. The Exchange notes that it does not currently permit the entry of market orders after 4:00 p.m.; only limit orders may be entered after 4:00 p.m. Therefore, if an LULD Trading Pause is extended beyond 4:00 p.m. due to continuing volatility, entry of new market orders will be prohibited after 4:00 p.m. Limit orders may still be entered up to the time of execution of the LULD Closing Cross.[40] New orders of any order type or any time in force described in NASDAQ Rule 4751 will be eligible to participate in the LULD Closing Cross.[41] Any new order entered between 3:50 and 4:00 p.m. that is not executed in the LULD Closing Cross shall be processed after the LULD Closing Cross is executed according to the entering firm's instructions on that order.[42]

D. Execution Processing

The Exchange will determine the closing price by taking the closing book (MOC and LOC orders only), the remaining eligible orders on the book prior to the LULD halt, and any new interest entered after the LULD halt.[43] The Exchange notes that priority in the cross will be price/time, with IO orders more aggressive than the closing price re-priced to the closing price but retaining their original time priority.[44] The Exchange states that the execution algorithm for the LULD Closing Cross shall be the same as currently used for the Cross.[45] Specifically,

(A) The Nasdaq Closing Cross will occur at the price that maximizes the number of shares of Eligible Interest in the Nasdaq Market Center to be executed;

(B) If more than one price exists under subparagraph (A), the Nasdaq Closing Cross shall occur at the price that minimizes any Imbalance;

(C) If more than one price exists under subparagraph (B), the Nasdaq Closing Cross shall occur at the entered price at which shares will remain unexecuted in the cross.

(D) If more than one price exists under subparagraph (C), the Nasdaq Closing Cross shall occur at:

i. In the case where a security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the Trading Pause;

ii. In the case where a security has not already traded during normal market hours on that trading day, the price that is closest to the previous NASDAQ Official Closing Price.[46]

Once the algorithm determines the proper closing price, the LULD Closing Cross will execute all orders at the determined price in strict price/time priority, rather than the complex priority currently set forth in NASDAQ Rule 4754(b)(3).[47] The Exchange notes that it selected the time-based priority method currently employed in the case of a trading halt rather than the more complex method used in the case of a standard closing cross because it believes that trading behavior during an LULD Trading Pause immediately prior to the close of trading will more closely resemble behavior during a trading halt than trading just prior to the close.[48] This is likely to be the case due to the absence of a continuous market during the LULD Trading Pause, as opposed to the presence of a continuous market just prior to the standard close of trading.[49]

According to the Exchange, excess interest at the closing price will be available for execution against available IO orders on the opposite side of the market.[50] Aggressive IO orders opposite the side of the imbalance that were entered prior to other orders at exactly the crossing price will be re-priced to the crossing price and have priority over those orders.[51] The LULD Closing Cross price will be the NASDAQ Official Closing Price for stocks that participate in the LULD Closing Cross.

E. Re-Opening Trading

After hours trading will begin immediately following execution of the

[32] *See id.*

[33] *See* proposed rule 4754(b)(6)(C)(i).

[34] *See* Exchange Rule 4754(a)(4) and (5).

[35] *See id.*

[36] *See* Notice *supra* note 3 at 2495. *See also* proposed rule 4754(b)(6)(C)(iii).

[37] *See* Amendment No. 1 to the proposal, *supra* note 4.

[38] *See* proposed rule 4754(b)(6)(C)(ii).

[39] Those orders include the following Time In Force markings: Market Hours Good-till-Cancelled (''MGTC''), Market Hours Day (''MDAY''), System Hours Expire Time (''SHEX''), System Hours Day (''SDAY''), System Hours Good-till-Cancelled (''SGTC''), or Good-til-Market Close ''GTMC''). *See* Notice *supra* note 3 at 2495.

[40] *See* Amendment No. 1 to the proposal, *supra* note 4 and proposed rule 4754(b)(6)(C)(iii).

[41] *See* Notice, *supra* note 3 at 2495.

[42] *See id.*

[43] *See id.*

[44] *See id.*

[45] *See id.*

[46] *See* Notice, *supra* note 3 at 2495; Amendment No. 1, *supra* note 4. The Exchange notes that this fourth tie-breaker would be used rarely but that when it is used this tie-breaker must be based on a fixed reference prices such as the last reported trade. This fixed tie-breaker, according to the Exchange, is superior to a floating one, such as midpoint or an NBBO, in situations where there is no continuous market just prior to the execution of the cross, as is the case prior to any halt. *Id.*

[47] *See* Notice, *supra* note 3 at 2495.

[48] *See* Amendment No. 1, *supra* note 4.

[49] *See id.*

[50] *See* Notice, *supra* note 3 at 2495.

[51] This treatment of IO orders differs slightly from the current closing cross where aggressive IO Orders may be re-priced to either the best bid or offer in order to interact only with MOC and LOC interest. *See id.*

LULD Closing Cross. According to the Exchange, at that time, all resting orders or newly entered orders not executed in the LULD Closing Cross will be either cancelled or available for execution in after-hours trading based on the entering firm's instruction on the order.[52]

III. Discussion and Commission Findings

After careful review of the proposal, as modified by Amendment No. 1, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[53] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[54] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public.

The Exchange notes that all aspects of the proposed LULD Closing Cross are based upon existing processes built into both the Exchanges' Closing Cross and Halt Cross. Consistent with existing processes, the Exchange will accept all orders resting on NASDAQ's continuous book at the time of the LULD Closing Cross, including newly entered orders, and any Special Closing Order, defined as a MOC, LOC, or IO order. Priority in the LULD Closing Cross will be price/time, with IO orders more aggressive than the closing price re-priced to the closing price but retaining their original time priority. The execution algorithm for the LULD Closing Cross shall be the same as currently used for the NASDAQ Closing Cross. Once the algorithm determines the proper closing price, the LULD Closing Cross will execute all orders at the determined price in strict price/time priority, rather than the complex priority currently set forth in NASDAQ Rule 4754(b)(3).[55]

Additionally, the Exchange will continue to disseminate the similar market data information for the LULD Closing Cross as it does with the IPO Cross and Halt Cross, which the Exchange notes is designed to facilitate the entry of additional offsetting interest in the closing process.[56]

The Exchange notes that it attempted to mitigate the risks associated with a Trading Pause that occurs near the end of regular trading hours to the greatest extent possible.[57] The Exchanges stated that it believes that this proposal is consistent with the Act and that the proposal is designed to preserve to the extent possible current order entry and trading behaviors, thereby reducing the potential for member and investor confusion.[58] The Exchange further stated that it believes this proposal is well-tailored to provide transparency and predictability by clearly defining when the LULD Closing Cross will occur, what orders will be included, what information will be disseminated, how the execution algorithm will operate, and when after-hours trading will begin.[59] Specifically the Exchange stated that it believes that maintaining the 4:00 p.m. market closing time is the approach most likely to result in a fair and orderly market at the close of trading.[60]

Regarding the proposed rule change in Amendment No. 1 concerning the treatment of IO orders, the Exchanges notes that, consistent with IO orders in the Cross, the purpose of IO orders in the LULD Closing Cross is to aid in the price discovery process and provide a stabilizing mechanism, which in a time of greater market volatility becomes all the more important.[61] As noted by the Exchange, in the standard Cross, IO orders are re-priced to a reference price that is the NASDAQ best bid for buys or the NASDAQ best offer for sells.[62] Without a bid or offer based on continuous trading due to the LULD Trading Pause, the LULD band price becomes a substitute reference price for the LULD Closing Cross IO Orders.[63] Additionally, buy and sell IO orders are not meant to trade against each other or cause imbalances and thus the IO orders in a LULD Closing Cross will be re-priced to $0.01 below the LULD band for buys and $0.01 above the LULD band for sells.[64]

Due to the likelihood of increased volatility after an LULD pause and the importance of orderly trading at the close, NASDAQ has determined to treat IO Orders differently in this circumstance.[65] NASDAQ believes that this treatment of IO Orders is appropriate and beneficial to investors and the market because, by definition, an LULD pause follows a period of unusual volatility and an LULD pause at the close of trading poses risks at a particularly important time of the trading day.[66] Using the LULD band as the reference price upon which to base IO Order prices will foster stability in an otherwise unstable time in the market. NASDAQ considered various alternatives for the re-pricing of IO Orders, ranging from re-pricing at the LULD bands, at one penny away from those bands, and at multiple pennies away. NASDAQ believes that re-pricing at a penny away from the LULD bands properly balances the need for a buffer to protect investors from excessive volatility (which would militate towards a narrower banding) and the need for unfettered price discovery (which would push towards wider banding). This balance, in NASDAQ's view, is the best way to protect investors and maintain a fair and orderly market.

Regarding the decision to prevent the cancellation or modification of previously entered MOC and LOC orders, the Exchange notes that the proposal is designed to promote stability and predictability in the orders that are entered for the close, rather than having last-minute cancellations of ''on close'' orders which would cause continual changes to the order balance in a security near the end of trading.[67] The Exchange further notes that Members are not required to enter such orders in the first place. The Exchange considered permitting members to cancel or modify previously entered MOC and LOC Orders, but decided not to for several reasons. First, the Exchange notes that members that participate in NASDAQ's Closing Cross rely on the fixed status of MOC and LOC Orders to anchor the crosses; the benefits of stability apply with equal force to the LULD Closing Cross.[68] Second, the Exchange notes that there is a benefit to maintaining the same behavior of specific order types to the greatest extent possible; changing the behavior of order types could create member confusion.[69] Lastly, the

[52] *See id.*

[53] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[54] 15 U.S.C. 78f(b)(1).

[55] *See* proposed rule 4754(b)(6)(D) and Notice, *supra* note 3 at 2495. As the Exchange noted further, it selected the time-based priority method currently employed in the case of a trading halt rather than the more complex method used in the case of a standard closing cross because it believes that trading behavior during an LULD Trading Pause immediately prior to the close of trading will more closely resemble behavior during a trading halt than trading just prior to the close. *See* Amendment No. 1, supra note 4.

[56] *See* Notice, *supra* note 3 at 2494.

[57] *See id.* at 2496.

[58] *See id.* at 2495.

[59] *See id.* at 2496.

[60] *See id.* at 2494.

[61] *See* Amendment No. 1, *supra* note 4.

[62] *See id.*

[63] *See id.*

[64] *See id.*

[65] *See id.*

[66] *See id.*

[67] *See* Notice, *supra* note 3 at 2496.

[68] *See id.* at 2495.

[69] *See id.*

Exchange notes that members that enter MOC and LOC orders are and will continue to be fully aware of the risk of price movements at the close, including the risk of an LULD Trading Pause and that members can avoid that risk by changing their behavior and entering other order types if they deem the risk to be too large.[70] The Exchange concluded that the better course is to prevent the cancellation or modification of MOC and LOC Orders to the same extent as currently allowed on the Exchange.[71]

As explained above, the Exchange has proposed certain price and execution constraints for the LULD Closing Cross to ensure that the auction occurs at a price that is based on rational and current market conditions.[72] Specifically, NASDAQ stated that it believes that the proposed price check for movement of five percent or 50 cents, whichever is greater, in the last 15 seconds of an LULD Trading Pause is prudent in light of the volatility that stocks are, by definition, experiencing at the time of the LULD Trading Pause.[73] Additionally, the Exchange retains discretion under Rule 4754(b)(6)(A)(iii) to extend the timing of the LULD Closing Cross if an order imbalance exists at the time designated for the LULD Closing Cross to occur, up to 5:00 p.m. The Exchange states that 5:00 p.m. is a reasonable time to end such volatility extensions and cancel the closing cross because as volatility in a security continues towards 5:00 p.m., the likelihood of a smooth LULD Closing Cross diminishes.[74] The Exchange notes that while it is prudent to extend the time for executing the closing cross rather than risk a volatile close, the extension must be balanced by the need for closure.[75] NASDAQ represents that the 5:00 p.m. cut-off time represents a reasonable balance.[76]

For the various reasons noted above, the Commission finds that the proposed rule change as modified by Amendment No. 1 is consistent with the Act, including Section 6(b)(5) of the Act,[77] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public.

The Commission finds good cause to approve the filing, as modified by Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of the publication of notice of the filing thereof in the **Federal Register**. The proposed revisions should further enhance the Exchange's policies and procedures with respect to the operation of the Plan. Accelerated approval would allow the Exchange to update its rule text immediately, thus providing users with greater clarity and certainty with respect to the use of the new LULD Closing Cross functionality offered by the Exchange in anticipation of the application of the Plan through the end of regular trading Hours. Accordingly, the Commission finds that good cause exists, consistent with Section 6(b)(5) of the Act, to approve the filing, as modified by Amendment No. 1, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–004. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–004, and should be submitted on or before March 20, 2014.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[78] that the proposed rule change, SR–NASDAQ–2014–004, as modified by amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[79]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04241 Filed 2–26–14; 8:45 am]

BILLING CODE 8011–01–P

[70] *See id.*

[71] *See id.*

[72] *See supra* notes 41–47, and accompanying text.

[73] *See* Notice, *supra* note 3 at 2494.

[74] *See* Notice, *supra* note 3 at 2494.

[75] *See id.*

[76] *See id.*

[77] 15 U.S.C. 78f(b)(1).

[78] 15 U.S.C. 78s(b)(2).

[79] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8647]

Culturally Significant Objects Imported for Exhibition Determinations: ''Lygia Clark''

AGENCY: Department of State.

ACTION: Notice, correction.

SUMMARY: On May 3, 2012, notice was published on page 26353 of the **Federal Register** (volume 77, number 86) of determinations made by the Department of State pertaining to the exhibition ''Lygia Clark.'' The referenced notice is corrected here to include additional objects as part of the exhibition. Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of

Authority No. 257 of April 15, 2003), I hereby determine that the additional objects to be included in the exhibition ''Lygia Clark,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the additional exhibit objects at the Museum of Modern Art, New York, New York, from on or about May 10, 2014, until on or about August 24, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the additional exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 12, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–04347 Filed 2–26–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8648]

Advisory Committee on International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; FACA Committee meeting announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of a meeting of the Advisory Committee on International Postal and Delivery Services. This Committee has been formed in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

DATES: *Date and Time:* The meeting will be held on Friday, March 14, from 1:00 p.m. to 3:00 p.m.

Location: The American Institute of Architects, Board Room, 1735 New York Avenue NW., Washington, DC 20006.

Public input: Any member of the public interested in providing public input to the meeting should contact Mr. Joe Murphy, whose contact information is listed under *for further information* section of this notice. Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speaker list must be received in writing (letter, email or fax) prior to the close of business on Monday, March 10, 2014; written comments from members of the public for distribution at this meeting must reach Mr. Murphy by letter, email or fax by this same date. A member of the public requesting reasonable accommodation should make the request to Mr. Murphy by that same date.

Meeting agenda: The agenda of the meeting will include: A review of the major proposals and issues to be considered by the March/April Postal Operations Council meeting in Bern, Switzerland and other subjects related to international postal and delivery services of interest to Advisory Committee members and the public.

For further information, please contact Mr. Joe Murphy of the Office of Global Systems (IO/GS), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–4197 or by email at *murphyjp@state.gov.*

Dated: February 21, 2014.

Robert J. Faucher,

Director, Office of Global Systems, Bureau of International Organization Affairs, Department of State.

[FR Doc. 2014–04344 Filed 2–26–14; 8:45 am]

BILLING CODE 4710–19–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS464]

WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping and Countervailing Measures on Large Residential Washers From Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that the Republic of Korea (''Korea'') has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement''). That request may be found at *www.wto.org* contained in a document designated as WT/DS464/4. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 31, 2014, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2013–0031. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: J. Daniel Stirk, Associate General Counsel, or Brooks E. Allen, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Pursuant to this provision, USTR is providing notice that a dispute settlement panel has been established in this matter pursuant to the WTO Dispute Settlement Understanding (''DSU''). The panel will hold its meetings in Geneva, Switzerland.

Major Issues Raised by Korea

On December 26, 2012, the U.S. Department of Commerce published in the **Federal Register** notice of its final affirmative less-than-fair-value (''LTFV'') determination in the antidumping investigation concerning large residential washers from Korea (77 FR 75988). On February 15, 2013, the Department of Commerce published its antidumping duty order (78 FR 11148).

On December 26, 2012, the Department of Commerce published in the **Federal Register** notice of its final affirmative countervailing duty determination concerning large residential washers from Korea (77 FR 75975) and on February 15, 2013, published its countervailing duty order (78 FR 11154).

In its request for the establishment of a panel, Korea alleges that the Department of Commerce improperly

calculated margins of dumping through its application of an alternative, average-to-transaction comparison methodology and its alleged use of a methodology that Korea describes as ''zeroing.'' Korea alleges that the final LTFV determination and antidumping duty order, as well as ''preliminary and final determinations in administrative reviews, new shipper reviews, sunset reviews, changed circumstances reviews, and other segments'' are inconsistent with Articles 1, 2.1, 2.4, 2.4.2, 5.8, 9.3, 9.5, 11.2, and 11.3 of the Anti-Dumping Agreement, and Articles VI:1 and VI:2 of the General Agreement on Tariffs and Trade 1994.

Korea also challenges ''as such'' the Department of Commerce's use of an alternative, average-to-transaction comparison methodology and its alleged use of a methodology that Korea describes as ''zeroing.'' Korea alleges that these methodologies are inconsistent, ''as such,'' with Articles 1, 2.1, 2.4, 2.4.2, 9.3, 9.5, 11.2, 11.3, and 18.4 of the Anti-Dumping Agreement, Articles VI:1 and VI:2 of the General Agreement on Tariffs and Trade 1994, and Article XVI:4 of the WTO Agreement.

Korea further alleges that the Department of Commerce improperly calculated countervailing duties with respect to certain tax credits received by one respondent. Korea alleges that the final countervailing duty determination and countervailing duty order, as well as ''preliminary and final determinations in administrative reviews, new shipper reviews, sunset reviews, changed circumstances reviews, and other segments'' are inconsistent with Articles 1.1, 1.2, 2.1, 2.2, 10, 14, 19.4, and 32.1 of the Agreement on Subsidies and Countervailing Measures, and with Article VI:3 of the General Agreement on Tariffs and Trade 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2013–0031. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2013–0031 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Comment Now!'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comments'' field, or by attaching a document using an ''Upload File'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments'' field.

A person requesting that information contained in a comment that he/she submitted be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with Section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and will be open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2013–0031, accessible to the public at *www.regulations.gov.*

The public file will include non-confidential comments received by USTR from the public regarding the dispute. The following documents will be made available to the public at *www.ustr.gov*: the United States' submissions, any non-confidential submissions received from other participants in the dispute, and any non-confidential summaries of submissions received from other participants in the dispute. The report of the panel in this proceeding and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, at *www.wto.org.* Comments open to public inspection may be viewed at *www.regulations.gov.*

Juan Millan,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2014–04236 Filed 2–26–14; 8:45 am]

BILLING CODE 3290–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Consensus Standards, Light-Sport Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of two new and eight revised consensus standards relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule issued July 16, 2004, and effective September 1, 2004. ASTM International Committee F37 on Light Sport Aircraft developed the new and revised standards with Federal Aviation Administration (FAA) participation. By this notice, the FAA finds the new and revised standards acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule.

DATES: Comments must be received on or before April 28, 2014.

ADDRESSES: Comments may be mailed to: Federal Aviation Administration, Small Airplane Directorate, Programs and Procedures Branch, ACE–114, Attention: Terry Chasteen, Room 301,

901 Locust, Kansas City, Missouri 64106. Comments may also be emailed to: *9-ACE-AVR-LSA-Comments@faa.gov.* All comments must be marked: Consensus Standards Comments, and must specify the standard being addressed by ASTM designation and title.

FOR FURTHER INFORMATION CONTACT: Terry Chasteen, Light-Sport Aircraft Program Manager, Programs and Procedures Branch (ACE–114), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4147; email: *terry.chasteen@faa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of two new and eight revised consensus standards to previously accepted consensus standards relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule. ASTM International Committee F37 on Light Sport Aircraft developed the new and revised standards. The FAA expects a suitable consensus standard to be reviewed at least every two years. The two-year review cycle will result in a standard revision or reapproval. A standard is issued under a fixed designation (i.e., F2244); the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A reapproval indicates a two-year review cycle completed with no technical changes. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval. A notice of availability (NOA) will only be issued for new or revised standards. Reapproved standards issued with no technical changes or standards issued with editorial changes only (i.e., superscript epsilon (ε)) are considered accepted by the FAA without need for a NOA.

Comments Invited: Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the consensus standard number and be submitted to the address specified above. All communications received on or before the closing date for comments will be forwarded to ASTM International Committee F37 for consideration. The standard may be changed in light of the comments received. The FAA will address all comments received during the recurring review of the consensus standard and will participate in the consensus standard revision process.

Background: Under the provisions of the Sport Pilot and Light-Sport Aircraft rule, and revised Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'', dated February 10, 1998, industry and the FAA have been working with ASTM International to develop consensus standards for light-sport aircraft. These consensus standards satisfy the FAA's goal for airworthiness certification and a verifiable minimum safety level for light-sport aircraft. Instead of developing airworthiness standards through the rulemaking process, the FAA participates as a member of Committee F37 in developing these standards. The use of the consensus standard process assures government and industry discussion and agreement on appropriate standards for the required level of safety.

Comments on Previous Notices of Availability

In the Notice of Availability (NOA) issued on May 31, 2013, and published in the **Federal Register** on June 11, 2013 the FAA asked for public comments on the new and revised consensus standards accepted by that NOA. The comment period closed on August 12, 2013. No public comments were received regarding the standards accepted by this NOA.

Consensus Standards in This Notice of Availability

The FAA has reviewed the standards presented in this NOA for compliance with the regulatory requirements of the rule. Any light-sport aircraft issued a special light-sport airworthiness certificate, which has been designed, manufactured, operated and maintained, in accordance with this and previously accepted ASTM consensus standards provides the public with the appropriate level of safety established under the regulations. Manufacturers who choose to produce these aircraft and certificate these aircraft under 14 CFR part 21, §§ 21.190 or 21.191 are subject to the applicable consensus standard requirements. The FAA maintains a listing of all accepted standards on the FAA Web site.

The Revised Consensus Standard and Effective Period of Use

The following previously accepted consensus standards have been revised, and this NOA is accepting the later revision. Either the previous revision or the later revision may be used for the initial certification of special light-sport aircraft until August 27, 2014. This overlapping period of time will allow aircraft that have started the initial certification process using the previous revision level to complete that process. After August 27, 2014, manufacturers must use the later revision and must identify the later revision in the Statement of Compliance for initial certification of special light-sport aircraft unless the FAA publishes a specific notification otherwise. The following Consensus Standards may not be used after August 27, 2014:

ASTM Designation F2240–08, titled: Standard Specification for Manufacturer Quality Assurance Program for Powered Parachute Aircraft

ASTM Designation F2241–05a, titled: Standard Specification for Continued Airworthiness System for Powered Parachute Aircraft

ASTM Designation F2244–10, titled: Standard Specification for Design of Powered Parachute Aircraft

ASTM Designation F2245–12d, titled: Standard Specification for Design and Performance of a Light Sport Airplane

ASTM Designation F2279–06, titled: Standard Practice for Quality Assurance in the Manufacture of Fixed Wing Light Sport Aircraft

ASTM Designation F2353–05, titled: Standard Specification for Manufacturer Quality Assurance Program for Lighter-Than-Air Light Sport Aircraft

ASTM Designation F2355–12, titled: Standard Specification for Design and Performance Requirements for Lighter-Than-Air Light Sport Aircraft

ASTM Designation F2426–05a, titled: Standard Guide on Wing Interface Documentation for Powered Parachute Aircraft

ASTM Designation F2448–04, titled: Standard Practice for Manufacturer Quality Assurance System for Weight-Shift-Control Aircraft

ASTM Designation F2449–09, titled: Standard Specification for Manufacturer Quality Assurance Program for Light Sport Gyroplane Aircraft

ASTM Designation F2506–10,[1], titled: Standard Specification for Design and Testing of Fixed-Pitch or Ground Adjustable Light Sport Aircraft Propellers

ASTM Designation F2564–11, titled: Standard Specification for Design and Performance of a Light Sport Glider

ASTM Designation F2930–12, titled: Standard Guide for Compliance with Light Sport Aircraft Standards

The Consensus Standards

The FAA finds the following new and revised consensus standards acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule. The following consensus standards become effective February 27, 2014 and may be used unless the FAA publishes a specific notification otherwise:

ASTM Designation F2241–13, titled: Standard Specification for Continued Airworthiness System for Powered Parachute Aircraft

ASTM Designation F2244–13, titled: Standard Specification for Design of Powered Parachute Aircraft

ASTM Designation F2245–13b, titled: Standard Specification for Design and Performance of a Light Sport Airplane

ASTM Designation F2355–13, titled: Standard Specification for Design and Performance Requirements for Lighter-Than-Air Light Sport Aircraft

ASTM Designation F2426–13, titled: Standard Guide on Wing Interface Documentation for Powered Parachute Aircraft

ASTM Designation F2506–13, titled: Standard Specification for Design and Testing of Light Sport Aircraft Propellers

ASTM Designation F2564–13, titled: Standard Specification for Design and Performance of a Light Sport Glider

ASTM Designation F2930–13, titled: Standard Guide for Compliance with Light Sport Aircraft Standards

ASTM Designation F2972–12, titled: Standard Specification for Light Sport Aircraft Manufacturer's Quality Assurance System

ASTM Designation F3035–13, titled: Standard Practice for Production Acceptance in the Manufacture of a Fixed Wing Light Sport Aircraft

Availability

These consensus standards are copyrighted by ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Individual reprints of a standard (single or multiple copies, or special compilations and other related technical information) may be obtained by contacting ASTM at this address, or at (610) 832–9585 (phone), (610) 832–9555 (fax), through *service@astm.org* (email), or through the ASTM Web site at *www.astm.org.* To inquire about standard content and/or membership or about ASTM International Offices abroad, contact Christine DeJong, Staff Manager for Committee F37 on Light Sport Aircraft: (610) 832–9736, *cdejong@astm.org.*

Issued in Kansas City, Missouri, on February 21, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04321 Filed 2–26–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet April 29, 2014 from 8:30 a.m. to 5:00 p.m. The Charting Group will meet April 30 and May 1, 2014 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be hosted by MITRE at 7517 Colshire Drive, Conference Center, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK 73125; telephone: (405) 954–5852; Email: *thomas.e.schneider@faa.gov.*

For information relating to the Charting Group, contact Valerie S. Watson, FAA, National Aeronautical Navigation Products (AeroNav Products), Quality Assurance & Standards, AJV–3B, 1305 East-West Highway, SSMC4, Station 3409, Silver Spring, MD 20910; telephone: (301) 427–5155; Email: *valerie.s.watson@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from April 29 through May 1, 2014, from 8:30 a.m. to 5:00 p.m. at MITRE, at their Conference Center at 7517 Colshire Drive, McLean, VA 22102.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, and new aeronautical charting and air traffic control initiatives. Attendance is open to the interested public, but will be limited to the space available.

Please note the following special security requirements for access to MITRE. A picture I.D. is required of all U.S. citizens. Personnel with a U.S. Government badge (FAA, DOT, etc.) will be issued a ''Non-Escort'' badge. All other personnel will be issued an ''Escort Required'' badge.

All Non-U.S. citizen participants are required to have a passport. Additionally, no later than April 15, 2014, ALL non-U.S. national attendees must provide their name, country of citizenship, company/organization representing, and country of the company/organization to: Al Herndon, MITRE, at *aherndon@mitre.org.* Foreign nationals who do not provide the required information will not be allowed entrance—NO EXCEPTIONS.

The public must make arrangements by April 8, 2014, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION** section not later than April 8, 2014. Public statements will only be considered if time permits.

Issued in Washington, DC, on February 18, 2014.

Valerie S. Watson,

Co-Chair, Aeronautical Charting Forum.

[FR Doc. 2014–04309 Filed 2–26–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2014–0007]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995

(44 U.S.C. 3501–3521), this notice announces that FHWA will submit the collection of information described below to the Office of Management and Budget (OMB) for review and comment. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 20, 2013. The PRA submission describes the nature of the information collection and its expected cost and burden.

DATES: Please submit comments by March 31, 2014.

ADDRESSES: You may submit comments identified by DOT Docket ID 2014-0007 by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

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

Hand Delivery or Courier: 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. ET, Monday through Friday, except Federal holidays.

Crystal Jones, 202–366–2976, Office of Freight Management & Operations (HOFM–1), Office of Operations, Federal Highway Administration, 1200 New Jersey Ave., Room E84–313, Washington, DC 20509. Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Utilization of the Private Sector for Surveying and Mapping Services Survey.

Background: Section 1517 of MAP–21, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141), requires the Secretary of Transportation to conduct a survey of all States to determine the percentage of projects carried out under title 23, United States Code, in each State that utilize private sector sources for surveying and mapping services. Additionally, Section 306 of Title 23, United States Code, requires the Secretary of Transportation to issue guidance to encourage States to utilize, to the maximum extent practicable, private sector sources for surveying and mapping services for projects under title 23 of the United States Code; and, to develop a process for the oversight and regular monitoring of each State's use of the private sector to provide these services.

The FHWA, via a survey, will be requesting information from the State Transportation Agencies to determine the percent of projects in each state for which private sector sources were utilized for surveying and mapping services. Included in the survey will be the request for information from the State transportation agencies, on the extent to which they use the private sector for surveying and mapping activities. Information obtained from the survey will be used to issue revised guidance recommending appropriate roles for government and private sector surveying activities and in continuing to encourage States to use private sector sources to provide these services. The survey results will also be used to develop a process for the oversight and regular monitoring of each State's use of the private sector to provide these services.

Respondents: State Transportation Agencies (52, including the District of Columbia and Puerto Rico) in the first year, with follow-up surveys every two years after the initial survey.

Frequency: Every two years after the initial survey.

Estimated Average Burden per Response: 24 hours per participant State and 1.5 hours in the follow-up years.

Estimated Total Annual Burden Hours: Approximately 1,248 hours in the first year and 78 hours in the follow-up years.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: February 21, 2014.

Michael Howell,

Information Collection Officer.

[FR Doc. 2014–04307 Filed 2–26–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 24, 2014.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before March 31, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 622–1295, emailing *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0172.

Type of Review: Extension without change of a currently approved collection.

Title: Form 4562—Depreciation and Amortization (Including Information on Listed Property).

Form: 4562.

Abstract: Taxpayers use Form 4562 to: claim a deduction for depreciation and/or amortization; make a section 179 election to expense depreciable assets; and answer questions regarding the use of automobiles and other listed property to substantiate the business use under section 274(d).

Affected Public: Businesses or other for-profit organizations; Farms; Individuals or households.

Estimated Annual Burden Hours: 448,368,447.

OMB Number: 1545–1102.

Type of Review: Extension without change of a currently approved collection.

Title: PS–19–92 (TD 9420—Final) Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit.

Abstract: These final regulations amend the utility allowances regulations concerning the low-income housing tax credit. The final regulations update the utility allowance regulations to provide new options for estimating tenant utility costs. The regulations provide the IRS the information it needs to ensure that low-income housing tax credits are being properly allocated under section 42.

Affected Public: Businesses or other for-profit organizations.

Estimated Annual Burden Hours: 4,008.

OMB Number: 1545–1345.

Type of Review: Extension without change of a currently approved collection.

Title: CO–99–91 (TD 8490) (Final) Limitations on Corporate Net Operating Loss.

Abstract: This regulation modifies the application of segregation rules under Section 382 in the case of certain issuances of stock by a loss corporation. This regulation provides that the segregation rules do not apply to small issuances of stock, as defined, and apply only in part to certain other issuances of stock for cash.

Affected Public: Businesses or other for-profit organizations.

Estimated Annual Burden Hours: 1.

OMB Number: 1545–1352.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8586 (Final) Treatment of Gain From Disposition of Certain Natural Resource Recapture Property.

Abstract: This regulation prescribes rules for determining the tax treatment of gain from the disposition of natural resource recapture property in accordance with Internal Revenue Code section 1254. Gain is treated as ordinary income in an amount equal to the intangible drilling and development costs and depletion deductions taken with respect to the property. The information that taxpayers are required to retain will be used by the IRS to determine whether a taxpayer has properly characterized gain on the disposition of section 1254 property.

Affected Public: Businesses or other for-profit organizations; Individuals or households.

Estimated Annual Burden Hours: 2,000.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–04318 Filed 2–26–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 24, 2014.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before March 31, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0023.

Type of Review: Revision of a currently approved collection.

Title: Quarterly Federal Excise Tax Return.

Form: 720 and related schedules.

Abstract: The information supplied on Form 720 is used by the IRS to determine the correct tax liability. Additionally, the data is reported by the IRS to Treasury so that funds may be transferred from the general revenue funds to the appropriate trust funds.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 4,478,956.

OMB Number: 1545–1903.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9168—Optional 10-Year Write-off of Certain Tax Preferences (REG–124405–03).

Abstract: This collection of information is required by the IRS to verify compliance with section 59(e). This information will be used to determine whether the amount of tax has been calculated correctly.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 10,000.

OMB Number: 1545–1905.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9289—Treatment of Disregarded Entities Under Section 752.

Abstract: The final regulations recognize that only the assets of a disregarded entity that limits its member's liability are available to satisfy creditors' claims under local law. The regulations provide rules under section 752 for taking into account the net value of a disregarded entity owned by a partner or related person for purposes of allocating partnership liabilities.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 3,000.

OMB Number: 1545–2178.

Type of Review: Revision of a currently approved collection.

Title: TD 9489—Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act (REG–118412–10).

Abstract: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act regarding status as a grandfathered health plan.

Affected Public: Private Sector: Businesses or other for-profits; Not-for-profit institutions.

Estimated Annual Burden Hours: 2,063.

OMB Number: 1545–2180.

Type of Review: Extension of a currently approved collection.

Title: Affordable Care Act; Notice of Rescission (TD 9491; REG–120399–10).

Abstract: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Affordable Care Act regarding preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, prohibition on discrimination in favor of highly compensated individuals, and patient protections.

Affected Public: Private Sector: Businesses or other for-profits; Not-for-profit institutions.

Estimated Annual Burden Hours: 25.

OMB Number: 1545–2181.

Type of Review: Extension without change of a currently approved collection.

Title: Affordable Care Act; Notice of Patient Protections (TD 9491; REG–120399–10).

Abstract: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Affordable Care Act regarding preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, prohibition on discrimination in favor of highly compensated individuals, and patient protections.

Affected Public: Private Sector: Businesses or other for-profits; Not-for-profit institutions.

Estimated Annual Burden Hours: 33,000.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2014–04298 Filed 2–26–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Publication of Iran General Licenses E and F

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice, publication of general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing General License E and General License F issued under the Iranian transactions sanctions program on September 10, 2013. General License E authorizes certain services in support of nongovernmental organizations' activities in Iran, subject to certain limitations. General License F authorizes certain services in support of professional and amateur sports activities and exchanges involving the United States and Iran, subject to certain limitations.

DATES: *Effective Date:* September 10, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Policy, tel.: 202–622–2402, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202–622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 10, 2013, OFAC issued General License E authorizing certain services in support of nongovernmental organizations' activities in Iran, subject to certain limitations, under the Iranian transactions sanctions program. Also on September 10, 2013, OFAC issued General License F authorizing certain services in support of professional and amateur sports activities and exchanges involving the United States and Iran, subject to certain limitations.

At the time of their issuance on September 10, 2013, OFAC made General License E and General License F available on the OFAC Web site (*www.treasury.gov/ofac*). With this notice, OFAC is publishing General License E and General License F in the **Federal Register**.

General License E

Authorizing Certain Services in Support of Nongovernmental Organizations' Activities in Iran

(a) Except as provided in paragraph (d) of this general license, nongovernmental organizations (''NGOs'') are authorized to export or reexport services to or related to Iran in support of the following not-for-profit activities that are designed to directly benefit the Iranian people:

(1) Activities related to humanitarian projects to meet basic human needs in Iran, including, but not limited to, the provision of donated health-related services; operation of orphanages; provision of relief services related to natural disasters; distribution of donated articles, such as food, clothing, and medicine, intended to be used to relieve human suffering; and donated training related to any of the foregoing activities;

(2) Activities related to non-commercial reconstruction projects in response to natural disasters in Iran for a period of up to two years following the natural disaster;

(3) Activities related to environmental and wildlife conservation projects in Iran, involving endangered species of fauna and flora and their supporting habitats; and

(4) Activities related to human rights and democracy building projects in Iran, including, but not limited to, the sponsorship of and attendance and training at conferences in Iran related to human rights projects, democracy building, or civil society development; efforts to increase access to information and freedom of expression; and public advocacy, public policy advice, polling, or surveys relating to human rights and democracy building.

(b) Transfers of funds in support of the activities outlined in section (a) above by a single NGO may not exceed USD$500,000 in the aggregate over a 12-month period.

(c) NGOs who engage in conduct pursuant to this general license must submit reports on a quarterly basis, providing information including, but not limited to, a detailed description of the services exported or reexported to Iran, any Iranian NGOs, Government of Iran entities, Iranian financial institutions, or other Iranian persons involved in the activities; the dollar amounts of any transfers to Iran; and the beneficiaries of those transfers. Reports must be filed with the Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, and with the Office of Sanctions Policy and Implementation, U.S. Department of State, 2201 C Street NW., Washington, DC 20520.

(d) This general license does not authorize:

(1) The exportation or reexportation of services specified in section (a) of this general license to any person whose property and interests in property are blocked pursuant to any part of 31 CFR chapter V other than part 560.

(2) Any activities in furtherance of Iranian military or industrial infrastructure or potential, or in connection with the Iranian energy, automobile, shipping, and shipbuilding sectors.

(3) Any transaction by a U.S.-owned or -controlled foreign entity otherwise prohibited by 31 CFR 560.215 if the transaction would be prohibited by any other part of chapter V if engaged in by a U.S. person or in the United States.

Note 1 to General License E: Please see 31 CFR 560.545 for a specific licensing policy for activities not specified in section (a) of this general license. Additionally, please see 31 CFR 560.210(b), which exempts from the prohibitions of 31 CFR 560.204 and 560.206 donations by U.S. persons of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.

Note 2 to General License E: United States depository institutions or United States registered brokers or dealers in securities are authorized to process transfers of funds in furtherance of activities authorized by this general license so long as the transfer is consistent with 31 CFR 560.516. United States depository institutions or United States registered brokers or dealers in securities may rely on the originator of the funds transfer with regard to compliance with paragraphs (a) and (b) of this general license, provided that the United States depository institution or the United States registered broker or dealer in securities does not know or have reason to know that the funds transfer is not in compliance with paragraphs (a) and (b) of this general license.

Issued: September 10, 2013.

General License F

Authorizing Certain Services in Support of Professional and Amateur Sports Activities and Exchanges Involving the United States and Iran

(a) Except as provided in paragraph (b) of this general license, the importation of Iranian-origin services into the United States or other dealing in such services, and the exportation or reexportation of services, directly or indirectly, from the United States or by a United States person related to professional and amateur sporting activities and exchanges involving the United States and Iran are authorized, including, but not limited to, activities related to exhibition matches and events, the sponsorship of players, coaching, refereeing, and training.

(b) This general license does not authorize the exportation or reexportation of services specified in section (a) of this general license to any person whose property and interests in property are blocked pursuant to any part of 31 CFR chapter V other than part 560.

Note 1 to General License F: United States depository institutions or United States registered brokers or dealers in securities are authorized to process transfers of funds in furtherance of activities authorized by this general license so long as the transfer is consistent with 31 CFR 560.516.

Note 2 to General License F: This general license does not authorize any transaction by a U.S.-owned or -controlled foreign entity otherwise prohibited by 31 CFR 560.215 if the transaction would be prohibited by any other part of chapter V if engaged in by a U.S. person or in the United States.

Issued: September 10, 2013.

Dated: February 11, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2014–04035 Filed 2–26–14; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 79 Thursday,

No. 39 February 27, 2014

Part II

National Credit Union Administration

12 CFR Parts 700, 701, 702 et al.

Prompt Corrective Action—Risk-Based Capital; Proposed Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 702, 703, 713, 723, and 747

RIN 3133–AD77

Prompt Corrective Action—Risk-Based Capital

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is proposing to amend NCUA's regulations regarding prompt corrective action (PCA) to restructure the part, and make various revisions, including replacing the agency's current risk-based net worth requirements with new risk-based capital requirements for federally insured ''natural person'' credit unions. The proposed risk-based capital requirements would be more consistent with NCUA's risk-based capital measure for corporate credit unions and the regulatory risk-based capital measures used by the Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve, and Office of the Comptroller of Currency (Other Federal Banking Regulatory Agencies). In addition, the proposed revisions would revise the risk-weights for many of NCUA's current asset classifications; require higher minimum levels of capital for federally insured natural person credit unions with concentrations of assets in real estate loans, member business loans (MBLs) or higher levels of delinquent loans; and set forth the process for NCUA to require an individual federally insured natural person credit union to hold higher levels of risk-based capital to address unique supervisory concerns raised by NCUA. The proposed revisions would also eliminate several of NCUA's provisions, including provisions relating to regular reserve accounts, risk-mitigation credits, and alternative risk-weights.

DATES: Comments must be received on or before May 28, 2014.

ADDRESSES: You may submit comments, identified by RIN 3133–AD77, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name]—Comments on Proposed Rule: PCA—Risk-Based Capital'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

You can view all public comments on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: *Technical:* Steven Farrar, Loss/Risk Analyst, Office of Examination and Insurance, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518–6393, or *Legal:* John H. Brolin, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518–6438.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule
II. Section-by-Section Analysis
III. Effective Date
IV. Regulatory Procedures

I. Summary of the Proposed Rule

The Board is proposing to revise and replace NCUA's current PCA rules for federally insured natural person credit unions.[1] The proposed revisions would include a new method for computing NCUA's risk-based capital measure that is more consistent with the risk-based capital measure for corporate credit unions[2] and the risk-based capital measures used by the Other Federal Banking Regulatory Agencies.[3] In general, the revisions would adjust the risk-weights for many asset classifications to lower the minimum risk-based capital requirement for credit unions with low risk operations. Conversely, the revisions would require higher minimum levels of risk-based capital for credit unions with concentrations of assets in real estate loans, MBLs, or high levels of delinquent loans. In addition, due to the known limitations of any widely applied risk-based measurement system, the proposed rule includes procedures for NCUA to require an individual credit union to hold a higher level of risk-based capital where specific supervisory concerns arise regarding the credit union's condition. Finally, the revisions would eliminate the provisions of current § 702.401(b) relating to transfers to the regular reserve account, current § 702.106 regarding the standard calculation of risk-based net worth requirement, current § 702.107 regarding alternative components for standard calculation, and current § 702.108 regarding risk-mitigation credit.

A. Background

NCUA's primary mission is to ensure the safety and soundness of federally insured credit unions. NCUA performs this public function by examining and supervising all federal credit unions, participating in the examination and supervision of federally insured state chartered credit unions in coordination with state regulators, and insuring federally insured credit union members' accounts.[4] In its role as administrator of the National Credit Union Share Insurance fund (NCUSIF), NCUA insures and regulates approximately 6,753 federally insured credit unions, holding total assets exceeding $1 trillion and representing approximately 94.6 million members.

In 1998, Congress enacted the Credit Union Membership Access Act (CUMAA).[5] Section 301 of CUMAA added new section 216 to the Federal Credit Union Act (FCUA),[6] which requires the Board to adopt by regulation a system of PCA to restore the net worth of federally insured ''natural person'' credit unions (credit unions) that become inadequately capitalized. In developing the system, the Board is required to take into account that credit unions do not issue capital stock, must rely on retained earnings to build net worth, and have boards of directors that consist primarily of volunteers. In 2000, the Board implemented the required system of PCA primarily under part 702 of NCUA's regulations.[7]

[1] 12 CFR Part 702.

[2] *See* 12 CFR Part 704.

[3] *See* 78 FR 55339 (Sept. 10, 2013).

[4] Within the nine states that allow privately insured credit unions, approximately 133 state-chartered credit unions are privately insured and are not subject to NCUA regulation or oversight.

[5] Public Law 105–219, 112 Stat. 913 (1998).

[6] 12 U.S.C. 1790d.

[7] 12 CFR Part 702; *see also* 65 FR 8584 (Feb. 18, 2000) *and* 65 FR 44950 (July 20, 2000).

The purpose of section 216 of the FCUA is to ''resolve the problems of [federally] insured credit unions at the least possible long-term loss to the [NCUSIF].'' [8] To carry out that purpose, Congress set forth a basic structure for PCA in section 216 that consists of three principal components: (1) A framework combining mandatory actions prescribed by statute with discretionary actions developed by NCUA; (2) an alternative system of PCA to be developed by NCUA for credit unions defined as ''new''; and (3) a risk-based net worth requirement to apply to credit unions that NCUA defines as ''complex.'' This proposed rule is primarily focused on principal components (1) and (3), although amendments to part 702 of NCUA's regulations relating to principal component (2) are also being proposed.

Section 216(c) of the FCUA requires NCUA to, among other things, use a credit union's net worth ratio to determine its classification among five ''net worth categories'' set forth in the statute.[9] In general, ''net worth'' is defined as the retained earnings balance of the credit union,[10] and a credit union's ''net worth ratio'' is the ratio of its net worth to its total assets.[11] As a credit union's net worth ratio declines, so does its classification among the five net worth categories, thus subjecting it to an expanding range of mandatory and discretionary supervisory actions.[12]

In addition to the net worth ratio component described above, section 216(d) of the FCUA requires NCUA to define the term ''complex'' credit union ''based on the portfolios of assets and liabilities of credit unions.'' [13] It also requires NCUA to formulate a risk-based net worth (RBNW) requirement to apply to credit unions meeting that definition.[14] The RBNW requirement must ''take account of any material risks against which the net worth ratio required for [a federally] insured credit union to be adequately capitalized [(6 percent net worth ratio)] may not provide adequate protection.'' [15] Congress encouraged NCUA to, ''for example, consider whether the 6 percent requirement provides adequate protection against interest-rate risk and other market risks, credit risk, and the risks posed by contingent liabilities, as well as other relevant risks. The design of the [RBNW] requirement should reflect a reasoned judgment about the actual risks involved.'' [16]

Under current § 702.103 of NCUA's regulations, a credit union is defined as ''complex'' if ''[i]ts quarter-end total assets exceed fifty million dollars ($50,000,000); and . . . [i]ts [RBNW] requirement, as calculated under § 702.106, exceeds six percent (6%).'' [17] Current § 702.104 of NCUA's regulations defines eight risk portfolios of complex credit union assets, liabilities, or contingent liabilities (Table 1); and current § 702.106 sets forth the specific risk-weightings that are applied to the assets (Table 2).

TABLE 1—CURRENT § 702.104 RISK PORTFOLIOS DEFINED

Risk portfolio	Assets, liabilities, or contingent liabilities
(a) Long-term real estate loans.	Total real estate loans and real estate lines of credit (excluding MBLs) with a maturity (and next rate adjustment period if variable rate) greater than 5 years.
(b) MBLs outstanding	MBLs outstanding.
(c) Investments	As defined by federal regulation or applicable state law.
(d) Low-risk assets	Cash on hand and NCUSIF deposit.
(e) Average-risk assets	100% of total assets minus sum of risk portfolios above.
(f) Loans sold with recourse	Outstanding balance of loans sold or swapped with recourse, except for loans sold to the secondary mortgage market with a recourse period of 1 year or less.
(g) Unused MBL commitments.	Unused commitments for MBLs.
(h) Allowance	Allowance for Loan and Lease Losses limited to equivalent of 1.50% of total loans.

TABLE 2—§ 702.106 STANDARD CALCULATION OF RBNW REQUIREMENT

Risk portfolio	Amount of risk portfolio (as percent of quarter-end total assets) to be multiplied by risk-weighting	Risk-weighting
(a) Long-term real estate loans	0 to 25.00%	.06
	over 25.00%	.14
(b) MBLs outstanding	0 to 15.00%	.06
	>15.00% to 25.00%	.14
	over 25.00%	
(c) Investments	*By weighted-average life:*	
	0 to 1 year	.03
	>1 year to 3 years	.06
	>3 years to 10 years	.12
	>10 years	.20
(d) Low-risk assets	All %	.00
(e) Average-risk assets	All %	.06
(f) Loans sold with recourse	All %	.06
(g) Unused MBL commitments	All %	.06
(h) Allowance	Limited to equivalent of 1.50% of total loans (expressed as a percent of total assets).	(1.00)

A credit union's RBNW requirement is the sum of eight standard components. A standard component is calculated for each of the eight risk portfolios, equal to the sum of each amount of a risk portfolio times its risk-weighting. A credit union is classified ''undercapitalized'' if its net worth ratio is less than its applicable RBNW requirement.

[8] 12 U.S.C. 1790d(a)(1).

[9] Section 1790d(c).

[10] Section 1790d(o)(2).

[11] Section 1790d(o)(3).

[12] Section 1790d(c)–(g); 12 CFR 702.204(a)–(b).

[13] Section 1790d(d).

[14] *Id.*

[15] Section 1790d(d)(2).

[16] S. Rep. No. 193, 105th Cong., 2d Sess. 13 (1998) (S. Rep.).

[17] *See* 12 CFR 702.103 & .104 *and* 12 U.S.C. 1790d(c).

Section 216(c) of the FCUA requires that a credit union that meets the definition of ''complex,'' and whose net worth ratio initially places it in either of the ''adequately capitalized'' or ''well capitalized'' net worth categories, also satisfy a separate RBNW requirement. Under this separate RBNW requirement, the credit union must meet or exceed the minimum RBNW ratio corresponding to its net worth category (adequately capitalized or well capitalized) in order to remain classified in that category.[18] A complex credit union that meets the net worth ratio requirement for being adequately capitalized or well capitalized, but that fails to meet the corresponding RBNW requirement for either net worth category, is classified by section 216(c)(1) as ''undercapitalized'', and is subject to the mandatory and discretionary supervisory actions applicable to that category.[19]

The RBNW requirement for credit unions meeting the definition of ''complex'' was first applied on the basis of data in the Call Report reflecting activity in the first quarter of 2001.[20] NCUA's RBNW requirement has been largely unchanged since its implementation, with the following limited exceptions:

- Revisions were made in 2003 to amend the RBNW requirements for MBLs.[21]
- Revisions were made in 2008 to incorporate a change in the statutory definition of ''net worth.''[22]

In addition, the Board amended part 702 in 2011 to expand the definition of ''low-risk assets'' to include debt instruments on which the payment of principal and interest is unconditionally guaranteed by NCUA,[23] and again in 2013 to exclude credit unions with total assets of $50 million or less from the definition of ''complex'' credit union.[24]

B. Why is the NCUA Board issuing this rule?

The Board is proposing to change NCUA's general risk-based capital rules for determining the minimum level of required capital to enhance risk sensitivity and address weaknesses in the existing regulatory capital framework for credit unions. Capital and risk go hand-in-hand, and credit union senior management, boards, and regulators are all accountable for ensuring that appropriate capital levels are in place based on the credit union's risk exposure. The proposed rule reflects an effort to establish a risk-weighting system that is more indicative of the potential risks existing within credit unions. The proposed rule is intended to help credit unions better absorb losses and establish a safer, more resilient, and more stable credit union system. The improved resilience will enhance credit unions' ability to function during periods of financial stress and reduce risks to the NCUSIF.

In general, credit unions have high quality capital, with retained earnings being the predominant form of capital. However, in recent years, the NCUSIF did experience several hundred millions of dollars in losses due to failures of individual credit unions holding inadequate levels of capital relative to the levels of risk associated with their assets and operations. Examiners did warn officials at these credit unions that they needed to hold higher levels of capital to offset the risks in their portfolios, but the credit union officials ignored the examiners' recommendations, which were unenforceable. This proposal seeks to incorporate the lessons learned from those failures and better account for risks not addressed by the current rule.

The new risk-based capital requirements being proposed in this rule would apply to all credit unions with over $50 million in total assets. The capital requirements and PCA supervisory actions for ''new'' credit unions and credit unions with $50 million or less in assets would remain largely unchanged, with a few exceptions discussed in more detail below.

In developing the new risk-based capital requirement for ''complex'' credit unions, NCUA set forth the following goals for the proposed rule. First, the requirement should address weaknesses in the net worth ratio measure. Second, the requirement should address credit risk, interest rate risk, concentration risk, liquidity risk, operational risk, and market risk. Third, the requirement should enhance the stability of the credit union system. Fourth, the rule should rely primarily on data already collected on the Call Report to minimize additional recordkeeping burdens. Fifth, the requirement should be, given the preceding four goals, as easy as possible to understand and implement.

The proposed rule would replace the RBNW method currently used by credit unions to apply risk-weightings to their assets with a new risk-based capital ratio method that is more commonly applied to depository institutions worldwide. The proposed risk-based capital ratio is the percentage of a credit union's net worth available to cover losses, divided by the credit union's defined risk-weighted asset base. The Board believes the change in methodology would improve the comparison of assets and risk-adjusted capital levels across financial institutions. Use of a consistent framework for assigning risk-weights would promote improved understanding between all types of federally insured financial institutions.

This proposed rule would provide a common measure of asset risk and ensure that credit unions retain levels of capital that are commensurate with their level of risk. The proposal would also help NCUA identify, and credit unions to avoid, inadequately capitalized concentrations of asset classes that can lead to a credit union's failure. Further, under the proposed rule, credit unions would be better able to implement strategic plans based on their unique member service objectives and the corresponding risk by holding the appropriate level of capital.

The measure for a credit union's ''net worth ratio,'' which is defined in section 216(o)(3) of the FCUA, is a generalized measure of a credit union's net worth.[25] The net worth ratio of a credit union includes balance sheet accounts in the numerator that may have little or no value in the event of liquidation and excludes off-balance sheet exposures from the numerator. Recognizing these limitations of the net worth measure, Congress directed the Board in section 216(d)(2) of the FCUA to develop a RBNW requirement that ''take[s] account of any material risks against which the net worth ratio . . . may not provide adequate protection.''[26] The proposed risk-based capital measure includes only capital available to cover losses and takes into

[18] The RBNW requirement also indirectly impacts credit unions in the ''undercapitalized'' and lower net worth categories, which are required to operate under an approved net worth restoration plan. The plan must provide the means and a timetable to reach the ''adequately capitalized'' category. Section 1790d(f)(5); *12 CFR 702.206*(c). However, for ''complex'' credit unions in the ''undercapitalized'' or lower net worth categories, the minimum net worth ratio ''gate'' to that category will be 6 percent or the credit union's RBNW requirement, if higher than 6 percent. In that event, a complex credit union's net worth restoration plan will have to prescribe the steps a credit union will take to reach a higher net worth ratio ''gate'' to that category. *See 12 CFR 702.206*(c)(1)(i)(A). Section 1790d(c)(1)(A)(ii) and (c)(1)(B)(ii).

[19] 12 U.S.C. 1790d(c)(1)(c)(ii).

[20] 65 FR 44950 (July 20, 2000).

[21] 68 FR 56537 (Oct. 1, 2003).

[22] 73 FR 72688 (Dec. 1, 2008).

[23] 76 FR 16234 (Mar. 23, 2011).

[24] 78 FR 4033 (Jan. 18, 2013).

[25] 12 U.S.C. 1790d(0)(3) (''The term 'net worth ratio' means, with respect to a credit union, the ratio of the net worth of the credit union to the total assets of the credit union.'').

[26] 12 U.S.C. 1790d(d)(2).

consideration the credit union's off-balance sheet items and other risk factors.

Operating a credit union involves taking and managing a variety of risks, with the major types of risks identified and defined in Table 3 below.

TABLE 3—MAJOR TYPES OF RISKS IDENTIFIED IN CREDIT UNION BUSINESS [27]

Risk	Definition
Credit risk	The potential for loss resulting from the failure of a borrower or counterparty to perform on an obligation.
Compliance risk	The potential for loss arising from violations of laws or regulations or nonconformance with internal policies or ethical standards.
Concentration risk	The risk arising from excessive exposure to certain markets, industries, or groups.
Interest rate risk	A type of market risk that involves the potential for loss due to adverse movements in interest rates.
Liquidity risk	The risk that a credit union will be unable to meet its obligations when they become due, because of an inability to liquidate assets or obtain adequate funding.
Market risk	The potential for loss resulting from movements in market prices, including interest rates, commodity prices, stock prices, and foreign exchange rates.
Operational risk	The risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events.
Reputation risk	The potential for loss arising from negative publicity regarding an institution's business practices.
Strategic risk	The potential for loss arising from adverse business decisions or improper implementation of decisions.

The current RBNW measure focuses primarily on interest rate risk. However, the proposed risk-based capital ratio measure would focus more broadly on the various types of risks to credit unions by addressing additional risk factors and assigning specific risk-weights to:

- Delinquent loans,
- Concentrations of MBLs and real estate-secured loans,
- Equity investments, and
- Additional off-balance sheet exposures.

Rigorous and disciplined risk-based (risk-based capital ratio measure) and non-risk-based (net worth ratio measure) capital requirements working well together can enhance the ability of a credit union to cope with capital impairment during economic downturns. Moreover, an adequate capital buffer can cushion performance deterioration during times of stress, thereby promoting safety and soundness of the credit union system.

The proposed risk-based capital ratio measure primarily uses existing information contained in the Call Report. As compared to the current RBNW measure, the proposed risk-based capital ratio measure would include a greater number of exposure categories for purposes of calculating total risk-weighted assets. Thus, some additional data would need to be collected on the Call Report. This additional data would not, however, represent a material increase to the burden of completing the Call Report. The proposed extended effective date of the final rule would provide ample time for credit unions to adjust their systems to account for the additional data items that would be required in the Call Report.

Through this notice, NCUA invites public comment on all aspects of the proposed rule. Commenters are urged to recognize, however, that NCUA lacks discretion to deviate from the statutory requirements of section 216 of the FCUA.[28] To facilitate consideration of public comments on the proposed rule, the Board urges commenters to organize their comment letters on a section-by-section basis that corresponds with the proposed sections of the rule, and to include any general comments in its own section of the letter.

C. Impact of the Proposed Regulation

The proposed rule would make changes to the minimum regulatory capital requirement for credit unions that would be more reflective of risk, including additional subcategories of assets for risk measurement and additional concentration levels. This shift in emphasis would encourage credit unions to more actively manage risk in relation to the minimum required capital levels. As proposed, the rule would modify the current calculation method for computing RBNW to be more consistent with the risk-based capital measures used by the Other Federal Banking Regulatory Agencies. The proposed change in the calculation would allow setting specific risk-based capital ratio requirements for the top three capital classifications.

NCUA's analysis of 2013 Call Report data indicates that the overwhelming majority of credit unions with over $50 million in assets already have sufficient capital to comply with the proposed risk-based capital rules. In particular, NCUA estimates that over 90 percent of these credit unions, if subject to the requirements of the proposed rule today, would be in compliance with the minimum risk-based capital requirement under the rule. The Board recognizes, however, that some credit unions would likely need a transition period to accumulate additional capital or change their asset structure to achieve their desired capital classification. The Board also recognizes that credit unions would need a reasonable period of time to update their internal systems, policies, and procedures to account for these changes. As a result, the Board is proposing to delay the effective date of the new requirements after the final rule is published in the **Federal Register**, which is discussed in more detail below.

Using Call Report data as of June 2013, NCUA estimates that approximately 2,237 credit unions reported over $50 million in total assets, all of which would be subject to the proposed risk-based capital measures.

Existing data available to NCUA, including Call Report data, does not contain all of the information required to analyze the impact of every aspect of the proposal. However, NCUA believes the current Call Report data available provides sufficient information for NCUA to reasonably estimate the impact of the proposed regulation. Accordingly, NCUA analyzed the impact of the proposed rule on credit unions using Call Report data as of June 30, 2013.

Over 90 percent of credit unions subject to the proposed capital measures currently hold capital in excess of the minimum net worth ratio and the risk-based capital ratio required to be

[27] *See* U.S. Govt. Accountability Office, GAO–07–253, Bank Regulators Need to Improve Transparency and Overcome Impediments to Finalizing The Proposed Basel II Framework 9–10 (2007), *available at http://www.gao.gov/new.items/d07253.pdf.*

[28] 12 U.S.C. 1790d.

classified as well capitalized. As of June 2013, the proposed changes to the risk-based capital measure, if applied immediately, would cause 189 credit unions to experience a decline in their PCA classification from well capitalized to adequately capitalized and 10 well capitalized credit unions to experience a decline to undercapitalized. NCUA estimates that, collectively, the 10 credit unions that would experience a decline to undercapitalized would need to retain an additional $63 million in risk-based capital to become adequately capitalized, assuming no other adjustments. Affected credit unions may be required to change internal policies and practices to meet the new risk-based capital requirements of the proposed rule.

Based on June 2013 Call Report data, NCUA estimates that if the proposed risk-based capital requirements were applied today, the aggregate risk-based capital ratio for credit unions subject to the proposed risk-based capital measure would be 14.6 percent and the average risk-based capital ratio would be 15.7 percent. These numbers are well above the proposed 10.5 percent requirement for classification as well-capitalized.

II. Section-by-Section Analysis

Part 702—Capital Adequacy

Revised Structure of Part 702

The proposed rule would retitle current part 702, replacing the current title ''Prompt Corrective Action'' with the new title ''Capital Adequacy.'' [29] The more general term Capital Adequacy better characterizes the components of proposed part 702, which include the prompt corrective action, minimum regulatory capital measures, and supervisory actions required under section 216 of the FCUA.[30]

The proposed rule would also reorganize part 702 by consolidating NCUA's PCA requirements, which were previously included under subsections A, B, C, and D, under new subparts A and B. Proposed subpart A would be titled ''Prompt Corrective Action'' and proposed subpart B would be titled ''Alternative Prompt Corrective Action for New Credit Unions.'' [31] The reorganization of the proposed rule is designed so that credit unions need only reference the subpart applying to their institution to identify the applicable minimum capital standards and PCA regulations. The Board believes this consolidation will reduce confusion and avoid credit unions having to frequently flip back and forth through the four subparts of the current PCA rule.

In general, the proposed rule would restructure part 702 by consolidating most of the rules relating to capital and PCA that are applicable to credit unions that are not ''new'' credit unions under new subpart A. This change is intended to simplify the structure of part 702 by grouping the sections of the rule that are applicable only to credit unions *not* classified as new into a single subpart. The specific sections that would be included in new subpart A and the proposed changes to those sections are discussed in more detail below.

Similarly, the proposed rule would consolidate most of NCUA's rules relating to alternative capital and PCA requirements for ''new'' credit unions under new subpart B. This change is intended to simplify the structure of part 702 by grouping the sections of the rule that are applicable only to credit unions that are classified as new into one subpart. The sections under new subpart B would remain largely unchanged from the requirements of current part 702 relating to alternative capital and PCA, except for revisions to the sections relating to reserves and the payment of dividends. The specific sections included in new subpart B and the specific changes to the sections under new subpart B are discussed in more detail below.

Section 702.1 Authority, Purpose, Scope, and Other Supervisory Authority

Proposed § 702.1 would remain substantially similar to current § 702.1, but would be amended to update terminology and internal cross references within the section, consistent with the changes being proposed in other sections of part 702. No substantive changes to the section are intended.

Section 702.2 Definitions

Proposed § 702.2 would retain many of the definitions in current § 702.2 with no substantive changes. The proposed rule would, however, remove the paragraph number assigned to each definition under current § 702.2 and reorganize the section so the new and existing definitions are listed in alphabetic order. This reformatting would make § 702.2 more consistent with current §§ 700.2, 703.2 and 704.2 of NCUA's regulations.[32]

In addition, proposed § 702.2 would add a number of new definitions, and amend some existing definitions in § 702.2. These changes are intended to help clarify the meaning of terms used in new part 702. The definitions that would be added, amended, or removed are as follows:

Allowance for loan and lease loss (ALLL). The term ''allowance for loan and lease loss (ALLL)'' would be defined as reserves that have been established through charges against earnings to absorb future losses on loans, leases financing receivables or other extensions of credit. The definition would be consistent with the related Call Report field and the definition contained in the Call Report instructions.

Call Report. The proposed rule would define the term ''Call Report'' as the Call Report required to be filed by credit unions under § 741.6(a)(2). The term Call Report is a common expression within the credit union industry and is defined for clarification.

Capital. The proposed rule would define the term ''capital'' as the equity, as measured by GAAP, available to a credit union to cover losses. The term capital is a common expression within the financial services industry and is defined for clarification.

Cash equivalents. The proposed rule would define the term ''cash equivalents'' to mean short-term highly liquid investments that have original maturities of 3 months or less, at the time of purchase; are readily convertible to known amounts of cash; and are used as part of the credit union's cash-management activities. The definition would be consistent with the related Call Report field and the definition contained in the Call Report instructions.

Commitment. The proposed rule would define the term ''commitment'' as any legally binding arrangement that obligated the credit union to extend credit or to purchase assets. The definition would be consistent with the related Call Report field and the definition contained in the Call Report instructions.

CUSO. The proposed rule would define the term ''CUSO'' as a credit union service organization as defined in parts 712 and 741.

Delinquent loans. The proposed rule would define the term ''delinquent loans'' as loans that are 60 days or more

[29] The Board recently approved a proposed rule regarding capital planning and stress testing that also proposes to change the title of part 702 to ''Capital Adequacy.'' 78 FR 65583 (Nov. 1, 2013).

[30] 12 U.S.C. 1790d.

[31] Under both current § 702.301(b) and proposed § 702.201(b), a credit union is ''new'' if it is ''a federally-insured credit union that both has been in operation for less than ten (10) years and has total assets of not more than $10 million. A credit union which exceeds $10 million in total assets may become 'new' if its total assets subsequently decline below $10 million while it is still in operation for less than 10 years.''

[32] 12 CFR 700.2; 12 CFR 703.2; 12 CFR 704.2.

past due and loans placed on nonaccrual status. The definition would be consistent with the related Call Report field and the definition contained in the Call Report instructions.

Derivatives contract.[33] The proposed rule would define the term ''derivatives contract'' as, in general, a financial instrument, traded on or off an exchange, the value of which is directly depended upon the value on or more underlying securities, equity indices, debt instruments, commodities, interest rates other derivative instruments, or any agreed upon pricing index or arrangement. Derivatives contracts include interest rate derivatives contracts and any other instrument that poses similar counterparty credit risks. Derivatives contracts also include unsettled securities with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.

First mortgage real estate loan. The proposed rule would define the term ''first mortgage real estate loan'' as loans and lines of credit fully secured by first liens on real estate (excluding MBLs), where the original amortization of the mortgage exposure does not exceed 30 years; the loan underwriting took into account all the borrower's obligations, including mortgage obligations, principal, interest, taxes, insurance (including mortgage guarantee insurance) and assessments; and the loan underwriting concluded the borrower is able to repay the exposure using the maximum interest rate that may apply in the first five years, the maximum contract exposure over the life of the mortgage, and verified income.

GAAP. The proposed rule would define the term ''GAAP'' as generally accepted accounting principles as used in the United States. The term ''GAAP'' is a common expression within the industry and is defined for clarification.

Goodwill. The proposed rule would define the term ''goodwill'' as an intangible asset representing the future economic benefits arising from other assets acquired in a business combination (i.e. merger) that are not individually identified and separately recognized. The definition would be consistent with the related Call Report field and the definition contained in the Call Report instructions.

Intangible assets. The proposed rule would define the term ''intangible assets'' as those assets that are required to be reported as intangible assets in a credit union's Call Report, including but not limited to purchased credit card relationships, goodwill, favorable leaseholds, and core deposit value. The definition would be consistent with the related Call Report field and the definition contained in the Call Report instructions.

Investment in CUSO. The proposed rule would define the term ''investment in CUSO'' as the unimpaired value of the credit union's aggregate CUSO investments as measured under generally accepted accounting principles on an unconsolidated basis. The definition would be consistent with the related Call Report field and the definition contained in the Call Report instructions.

Identified losses. The proposed rule would define the term ''identified losses'' to mean those items that have been determined by an evaluation made by a state or federal examiner, as measured on the date of examination, to be chargeable against income, capital and/or valuation allowances such as the allowance for loan and lease losses. The proposed definition would also provide the following examples of identified losses: assets classified as losses, off-balance sheet items classified as losses, any provision expenses that are necessary to replenish valuation allowances to an adequate level, liabilities not shown on the books, estimated losses in contingent liabilities, and differences in accounts that represent shortages.

Loans to CUSO. The proposed rule would define the term ''loans to CUSO'' as the aggregate outstanding loan balance, available line(s) of credit from the credit union, and guarantees the credit union has made to or on behalf of a CUSO. The definition would be consistent with the related Call Report field and the definition contained in the Call Report instructions.

Loans transferred with limited recourse. The proposed rule would define the term ''loans transferred with limited recourse'' as the total principal balance outstanding of loans transferred, including participations, for which the transfer qualified for true sale accounting treatment under GAAP, and for which the transferor credit union retained some limited recourse (i.e. insufficient recourse to preclude true sale accounting treatment). The proposed definition would also clarify that the term does not include transfers that qualify for true sale accounting treatment but contain only routine representation and warranty paragraphs that are standard for sale on the secondary market provided the credit union is in compliance with all other related requirements such as capital requirements. The definition would be consistent with the related Call Report field and the definition contained in the Call Report instructions.

Mortgage servicing asset. The proposed rule would define the term ''mortgage servicing asset (MSA)'' as those assets (net of any related valuation allowances) resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the services for performing the servicing. The definition would be consistent with the related Call Report field and the definition contained in the Call Report instructions.

Off-balance sheet items. The proposed rule would define the term ''off-balance sheet items'' as items such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements that are not included on the balance sheet but are normally included in the financial statement footnotes. The definition would be consistent with the related Call Report field and the definition contained in the Call Report instructions.

Qualifying master netting agreement. The proposed rule would define the term ''qualifying master netting agreement'' as a written, legally enforceable agreement, provided that: (1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty; (2) the agreement provides the credit union the right to accelerate, terminate, and close out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II

[33] In May 2013, the Board issued a proposed rule that would permit credit unions to engage in limited derivatives activities for the purpose of mitigating interest rate risk. 78 FR 32191 (May 29, 2013). NCUA is still developing its derivatives rule and had not issued a final rule as of the date this proposal was presented to the Board. However, NCUA anticipates amending this rule to be consistent with any final rule issued by the Board related to the May 2013 derivatives proposal.

of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs; (3) the agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate is a net creditor under the agreement): and (4) in order to recognize an agreement as a qualifying master netting agreement for purposes of part 702, a credit union must conduct sufficient legal review, at origination and in response to any changes in applicable law, to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement meets the requirements of paragraph (2) of the definition of qualifying master netting agreement; and in the event of a legal challenge (including one resulting from default or from conservatorship, receivership, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of relevant jurisdictions.

Risk-based capital ratio. The proposed rule would define the term ''risk-based capital ratio'' as the percentage, rounded to two decimal places, of the risk-based capital numerator to total risk-weighted assets, as calculated in accordance with § 702.104(a).

Risk-weighted assets. The proposed rule would define the term ''risk-weighted assets'' as the total risk-weighted assets as calculated in accordance with § 702.104(c).

Senior executive officer. The proposed rule would define the term ''senior executive officer'' as a senior executive officer as defined by § 701.14(b)(2).

Total assets. The proposed rule would retain the definition of ''total assets'' in current § 702.2, but would restructure the definition and provide additional clarifying language. Under proposed paragraph (1) under the definition of ''total assets,'' for each quarter, a credit union must elect one of the four measures of total assets listed in paragraph (2) of the definition to apply for all purposes under part 702 except §§ 702.103 through 702.105 (risk-based capital ratio requirements). Proposed paragraph (2) under the definition of total assets would provide that ''total assets'' means a credit union's total assets as measured by either: (i) The credit union's total assets measured by the average of quarter-end balances of the current and three preceding calendar quarters; (ii) the credit union's total assets measured by the average of month-end balances over the three calendar months of the applicable calendar quarter; (iii) the credit union's total assets measured by the average daily balance over the applicable calendar quarter; or (iv) the credit union's total assets measured by the quarter-end balance of the applicable calendar quarter as reported on the credit union's Call Report.

U.S. Government agency. The proposed rule would define the term ''U.S. Government agency'' as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

Verified income. The proposed rule would define the term ''verified income'' as receipt and retention of corroborative information to establish the reality of the income supporting the repayment of the loan. The term ''verified income'' is a common expression within the industry and is defined for clarification.

Weighted-average life. The proposed rule would remove the term ''weighted-average life'' from current § 702.2 and replace it with the newly defined term ''weighted-average life of investments.''

Weighted-average life of investments. The proposed rule would move the definition of ''weighted-average life of investments'' contained within current § 702.105 to proposed § 702.2 and would add additional clarifying language. The weighted-average life of investments for registered investment companies, collective investment funds, money market funds, callable fixed rate debt obligations and deposits, variable rate debt obligations and deposits, capital in mixed-ownership government corporations, and other equity securities would remain unchanged. The proposal would assign specific risk-weights to investments in CUSOs and capital in corporate credit unions, as addressed below, thus removing them from the weighted-average life measure.

The proposed rule would define the term ''weighted-average life of investments'' as follows: For investments in registered investment companies (e.g., mutual funds) and collective investment funds (e.g., common trusts), the term ''weighted-average life of investments'' would mean the maximum weighted-average life or duration target of the investment disclosed, directly or indirectly, in the most recent prospectus or trust instrument (if the maximum weighted-average life or duration target is not disclosed, the weighted-average life of investments means greater than 5 years, but less than 10 years). For investments in money market funds, as defined in 17 CFR 270.2a-7, and collective investment funds operated in accordance with short-term investment fund rules set forth in 12 CFR 9.18(b)(4)(ii)(B)(1) through (3), the term ''weighted-average life of investments'' would mean 1 year or less. For fixed rate debt obligations and deposits that are callable in whole, the term ''weighted-average life of investments'' would mean the period remaining to the maturity date. For fixed rate debt obligations and deposits that are non-callable and non-amortizing (e.g. bullet maturity instruments), the term ''weighted-average life of investments'' would mean the period remaining to the maturity date. For fixed rate debt obligations or deposits with periodic principal pay downs (e.g., mortgage-backed securities), the term ''weighted-average life of investments'' would be defined according to industry standard calculations, which include the impact of unscheduled payments. For variable rate debt obligations and deposits (regardless of whether the investment amortizes), the term ''weighted-average life of investments'' would mean the period remaining to the next rate adjustment date. For capital stock in mixed-ownership Government corporations, as defined in 31 U.S.C. 9101(2), the term ''weighted-average life of investments'' would mean greater than 1 year but less than or equal to 3 years. For other equity securities, the term ''weighted-average life of investments'' would mean greater than 10 years. For any other investments not addressed above, the term ''weighted-average life of investments'' would mean the average time to the return of a dollar of principal, calculated by multiplying each portion of principal received by the time at which it is expected to be received (based on a reasonable and supportable estimate of that time), and then taking the total of these time-weighted payments and dividing by the total amount of principal. The proposed definition of weighted-average life of investments reflects the current method used by credit unions to report investments on the Statement of Financial Condition on the Call Report. The definition has remained largely unchanged from when the risk-based net worth requirements of part 702 were first implemented.[34]

[34] See 65 FR 8597 (Feb. 18, 2000) (providing that: ''The definition [of weighted-average life] is adopted in modified form from Fabozzi, Frank and T. Dessa, eds., *The Handbook of Fixed Income Securities* (4th ed. 1995) at 518, and reflects the

A. Subpart A—Prompt Corrective Action

The proposed rule would establish new subpart A titled ''Prompt Corrective Action.'' New subpart A would contain the sections of part 702 relating to capital measures, supervisory PCA actions, requirements for net worth restoration plans, and reserve requirements for all credit unions *not* defined as ''new'' pursuant to section 216(b)(2) of the FCUA.[35]

Section 702.101 Capital Measures, Effective Date of Classification, and Notice to NCUA

The requirements of proposed § 702.101 would remain largely unchanged from current § 702.101. The title of proposed § 702.101, however, would be changed to ''Capital measures, effective date of classification, and notice to NCUA'' to better reflect the three major topics that would be covered in the section. In addition, the proposed rule would replace the terms ''net worth measures'' with ''capital measure,'' ''net worth classification'' with ''capital classification,'' and ''net worth category'' with ''capital category'' to reflect the terminology changes being made throughout the proposed rule, which were discussed above and are discussed in further detail below.

Section 702.102 Capital Classifications

The proposal would change the title of § 702.102 from ''Statutory net worth categories'' to ''Capital classifications.'' Although section 216(c) of the FCUA uses the general term ''net worth categories,'' NCUA believes that replacing the term ''net worth'' with the general term ''capital categories'' better describes the combined ''net worth ratio'' and ''risk-based net worth'' measurements that make up the five categories listed in the statute. Moreover, the term ''capital'' is generally more inclusive of all accounts available to pay losses than the term ''net worth'' and is more commonly used in the financial services industry. No substantive changes to the requirements of section 216(c) are intended by these changes in terminology. This section would continue to list the five statutory capital categories that are provided in section 216(c) of the FCUA.[36]

102(a) Capital Categories

Proposed § 702.102(a) would replace current § 702.102(a) and would set forth new minimum capital measures for complex credit unions. Although sections 216(c)(1)(A)(ii), (B)(ii), (C)(ii) and 216(d) of the FCUA use the term ''risk-based net worth'' requirement, NCUA believes that replacing the term ''risk-based net worth'' with the functionally equivalent term ''risk-based capital'' in the proposed rule would better describe the equity and assets the requirement would measure. Moreover, the term ''risk-based capital'' is more commonly used in the financial services industry, and is defined in a manner consistent with the requirements set forth in section 216. No changes to the requirements of the statute are intended by the use of the alternative term risk-based capital in the proposed rule.

Consistent with subsections 216(c)(1)(A) through (E) of the FCUA, the net worth ratio measures listed in proposed §§ 702.102(a)(1) through (5) would continue to match those listed in the statute for each capital category, and would use both the net worth ratio and the new risk-based capital ratio as elements of the capital categories for ''well capitalized'', ''adequately capitalized'' and ''undercapitalized'' credit unions. The risk-based capital ratio measure complements the net worth ratio, and section 216(d) of the FCUA requires the risk-based capital requirement be designed ''to take account of any material risks against which the net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection.'' Accordingly, the risk-based capital ratio includes components that require higher capital levels to reflect increased risk due to interest rate risk, concentration risk, credit risk, market risk, and liquidity risk.

In essence, the current RBNW requirement is evaluated on a pass/fail basis. The proposed rule, in contrast, would introduce a new scaled risk-based capital measurement approach for assigning capital classifications for well capitalized, adequately capitalized, and undercapitalized credit unions. This scaled approach would recognize the relationship between higher risk-based capital ratios and the creditworthiness of credit unions.

TABLE 4—PROPOSED CAPITAL CATEGORIES

A credit union's net worth classification is . . .	Net worth ratio	Risk-based capital ratio *	And subject to following condition(s) . . .
Well Capitalized	7% or above	10.5% or above	Must pass both net worth ratio and risk-based capital ratio.
Adequately Capitalized	6% to 6.99%	8% to 10.49%	Must pass both net worth ratio and risk-based capital ratio.
Undercapitalized	4% to 5.99%	Less than 8%	Must pass both net worth ratio and risk-based capital ratio.
Significantly Undercapitalized.	2% to 3.99%	N/A	Or if undercapitalized at <5% net worth and fails to timely submit or materially implement an approved net worth restoration plan.
Critically Undercapitalized	Less than 2%	N/A	None.

* Applies only to credit unions with quarter-end total assets exceeding $50 million.

method by which credit unions report investments in Schedule C of the Call Report.'').

[35] 12 U.S.C. 1790d(b)(2).

[36] 12 U.S.C. 1790d(c).

102(a)(1) Well Capitalized

Under proposed § 702.102(a)(1), to be classified as well capitalized, a credit union must maintain a net worth ratio of 7 percent or greater and, if a complex credit union, must also have a risk-based capital ratio of 10.5 percent or greater. The higher proposed risk-based capital requirement for the well capitalized classification is designed to bolster the resiliency of complex credit unions throughout financial cycles. The proposed 10.5 percent risk-based capital ratio target is comparable to the Other Federal Banking Regulatory Agencies' 8 percent Total Risk-based Capital ratio plus the 2.5 percent capital conservation buffer which is expected to be fully implemented in 2019.[37] NCUA is proposing the 10.5 percent risk-based capital ratio requirement, rather than the Other Federal Banking Regulatory Agencies' 8 percent, to avoid the complexity of implementing a capital conservation buffer.

102(a)(2) Adequately Capitalized

Under proposed § 702.102(a)(2), to be classified as adequately capitalized, a credit union must maintain a net worth ratio of 6 percent or greater and, if a complex credit union, must also have a risk-based capital ratio of 8 percent or greater. For example, a complex credit union with an 8 percent net worth ratio and an 8.5 percent risk-based capital ratio would be adequately capitalized under the proposed rule. The 8 percent risk-based capital ratio requirement for the credit union industry is a measure comparable to the 8 percent total risk-based capital ratio required by the Other Federal Banking Regulatory Agencies' for a bank to be adequately capitalized.

102(a)(3) Undercapitalized

Under proposed § 702.102(a)(3), to be classified as undercapitalized, a credit union must maintain a net worth ratio of 4 percent or greater and, if a complex credit union, fail to meet the minimum 8 percent total risk-based capital ratio requirement. For example, a complex credit union with an 8 percent net worth ratio and a 7.5 percent risk-based capital ratio would be undercapitalized under the proposed rule.

102(a)(4) Significantly Undercapitalized

Under proposed § 702.102(a)(4), a credit union is classified as significantly undercapitalized if: (1) It has a net worth ratio of less than 5 percent, and has received notice that its net worth restoration plan has not been approved;[38] (2) the credit union has a net worth ratio of 2 percent or more but less than 4 percent; or (3) the credit union has a net worth ratio of 4 percent or more but less than 5 percent, and the credit union either fails to submit an acceptable net worth restoration plan within the time prescribed in § 702.111, or materially fails to implement a net worth restoration plan approved by NCUA. Although proposed § 702.102(a)(4) has been worded differently to help clarify the requirements of the paragraph, the proposed rule would not change the criteria for being classified as significantly undercapitalized under part 702.

102(a)(5) Critically Undercapitalized

Under proposed § 702.102(a)(5), a credit union is classified as critically undercapitalized if it has a net worth ratio of less than 2 percent. The proposal would not change the criteria for being classified as critically undercapitalized.

102(b) Reclassification Based on Supervisory Criteria Other Than Net Worth

Proposed § 702.102(b) would remain mostly unchanged from current § 702.102(b), with only a few amendments to update terminology and make minor edits for clarity. No substantive changes are intended.

102(c) Non-Delegation

Proposed § 702.102(c) would be unchanged from current § 702.102(c).

102(d) Consultation With State Officials

Proposed § 702.102(d) would remain mostly unchanged from current § 702.102(d), with only a few small amendments for consistency with other sections of NCUA's regulations. No substantive changes are intended.

Section 702.103 Applicability of Risk-Based Capital Ratio Measure

Proposed § 702.103 would change the title of current § 702.103 from ''Applicability of risk-based net worth requirement'' to ''Applicability of risk-based capital ratio measure.'' Proposed § 702.103 would provide that, for purposes of § 702.102, a credit union is defined as ''complex,'' and a risk-based capital ratio requirement is applicable, only if the credit union's quarter-end total assets exceed $50 million, as reflected in its most recent Call Report. The proposal would eliminate current § 702.103(b) and define all credit unions with over $50 million in assets as ''complex.'' Under the current rule, credit unions are ''complex'' and subject to the RBNW requirement only if they have quarter-end total assets over $50 million *and* they have an RBNW over 6 percent. In the proposed rule all credit unions with total quarter end assets over $50 million would be considered ''complex'' and subject to the risk-based capital ratio.

In January 2013, NCUA revised part 702 by increasing the asset size of credit unions subject to the risk-based net worth requirement from $10 million to $50 million.[39] In setting the $50 million asset threshold, the Board considered the following factors for a variety of asset size ranges:

- The percentage of industry assets and units;
- Credit union complexity as measured by products and services;
- The history of failures; and
- The risk to the NCUSIF.

NCUA estimates that, as of June 30, 2013, approximately 2,237 of 6,681 credit unions reported total assets over $50 million. These credit unions hold approximately 94 percent of total credit union system assets.

Section 702.104 Risk-Based Capital Ratio Measures

Proposed § 702.104 would change the title of current § 702.104 from ''Risk portfolio defined'' to ''Risk-based capital ratio measures.'' Proposed § 702.104 would entirely replace the requirements for calculating the RBNW requirement for ''complex'' credit unions under current § 702.104 with a new risk-based capital ratio requirement.[40] The proposed section would require all ''complex'' credit unions to calculate the risk-based capital ratio as directed in this section. The proposed risk-based capital ratio is designed to enhance sound capital management and help ensure that credit unions maintain adequate levels of loss-absorbing capital going forward, strengthening the stability of the credit union system and ensuring credit unions serve as a source of credit in times of stress.

[37] On September 10, 2013, FDIC published an interim final rule that revised it risk-based and leverage capital requirements for FDIC-supervised institutions. 78 FR 55339 (Sept. 10, 2013).

[38] To qualify for a higher net worth classification, a significantly undercapitalized credit union must have a net worth restoration plan approved by NCUA.

[39] On January 18, 2013, NCUA published a final rule and IRPS 13–1 redefining ''small entity'' as a credit union with less than $50 million in assets and amending 12 CFR 702.103 increasing to $50 million the asset threshold used to define ''complex'' credit union for determined whether RBNW requirements apply. 78 FR 4032 (Jan. 18, 2013).

[40] 12 U.S.C. 1790d(d).

104(a) Calculation of Capital for the Risk-Based Capital Ratio

Proposed § 702.104(a) would provide that to determine its risk-based capital ratio, a complex credit union must calculate the percentage, rounded to two decimal places, of its risk-based capital numerator as described in § 702.104(b) to its total risk-weighted assets denominator as described in § 702.104(c). In simplest terms, the proposed risk-based capital ratio would be the percentage of a defined measure of the equity and other accounts held by a credit union that are available to cover losses, divided by a defined risk-weighted asset base. The proposed method of calculating risk-based capital would be generally consistent with the methods used in other sectors of the financial services industry. Conversely, the method of computing the RBNW measure in current § 702.104 is unique within the financial services industry, and frequently results in confusion and incorrect analyses when industry analysts attempt to compare credit union risk-weights for assets to bank risk-weights for assets. As with the current RBNW ratio, the proposed risk-based capital ratio calculation would be calculated primarily using information credit unions already report on the Call Report form required under § 741.6(a)(2) of NCUA's regulations.

104(b) Risk-based Capital Ratio Numerator

Proposed § 702.104(b) would provide that the risk-based capital numerator is the sum of the specific certain capital elements listed in § 702.104(b)(1), minus certain regulatory adjustments listed in § 702.104(b)(2). The proposed numerator for the risk-based capital ratio would continue to consist primarily of the components of a credit union's net worth. In order to capture all of the material risks while keeping the calculation from becoming overly complex, the proposed rule would add some additional equity items and other specified balance sheet items would be subtracted. The goal of the proposed risk-based capital ratio numerator is to achieve a measure that reflects a more accurate amount of equity and reserves available to cover losses.

TABLE 5—PROPOSED RISK-BASED CAPITAL NUMERATOR

Additions	Deductions
Undivided earnings (includes any regular reserve)	NCUSIF deposit.
Appropriations for non-conforming investments	Goodwill.
Other reserves	Other intangible assets.
Equity acquired in merger	Identified losses not reflected as adjustments to components of the risk-based numerator.
Net income.	
ALLL (limited to 1.25% of risk assets).	
Secondary capital accounts included in net worth.	
Section 208 assistance included in net worth (as defined in § 702.2).	

104(b)(1) Capital Elements of the Risk-Based Capital Ratio Numerator

Proposed § 702.104(b)(1) would list the capital elements of the risk-based capital numerator as follows:

- Undivided earnings (includes any regular reserve);
- Appropriation for non-conforming investments;
- Other reserves;
- Equity acquired in merger;
- Net income;
- ALLL, limited to 1.25% of risk assets;
- Secondary capital accounts included in net worth (as defined in § 702.2); and
- Section 208 assistance included in net worth (as defined in § 702.2).

The proposed risk-based numerator would include the equity acquired in merger component of the balance sheet. This equity item would be used in place of the total adjusted retained earnings acquired through business combinations amount credit unions report on the PCA Net Worth Calculation Worksheet in the Call Report. The equity acquired in merger is the GAAP equity recorded in a business combination and can vary from the amount of total adjusted retained earning acquired through business combinations, which is not a GAAP accounting item. The use of equity acquired in a merger, as measured using GAAP, more accurately reflects the overall value of the business combination transaction.

Because the ALLL is available to cover expected levels of loan losses, the proposed numerator also would include the ALLL, but it would be limited to 1.25 percent of total risk-weighted assets.[41] The RBNW calculation for ALLL in current § 702.104(h) is limited to 1.50 percent of loans and is included as a reduction in the level of risk assets. By establishing a limit in the amount of ALLL included in the numerator, the proposed rule would provide an incentive for granting quality loans and recording loan losses in a timely manner. The proposed 1.25 percent limit should not result in a disincentive to fully fund the ALLL above the 1.25 percent ceiling, because complex credit unions are bound by GAAP in maintaining the ALLL. NCUA estimates that, as of June 30, 2013, approximately 468 of the 2,237 ''complex'' credit unions have an ALLL greater than 1.25 percent of total risk assets.

The proposed risk-based capital numerator would not include the following Call Report equity items:

- Accumulated unrealized gains (losses) on available for sale securities;
- Accumulated unrealized losses for OTTI on debt securities;
- Accumulated unrealized net gains (losses) on cash flow hedges; and
- Other comprehensive income.

NCUA recognizes the items listed above reflect a credit union's actual loss absorption capacity at a specific point in time, but includes gains or losses that may or may not be realized. NCUA also recognizes that including these items in the risk-based numerator could lead to volatility in the risk-based capital measure, difficulty in capital planning and asset-management and other unintended consequences.[42] Accordingly, NCUA chose to exclude these items from the proposed risk-based capital numerator.

104(b)(2) Risk-Based Capital Numerator Deductions

Proposed § 702.104(b)(2) would provide that the elements deducted

[41] The 1.25 percent of risk-weighted assets limitation is consistent with the Basel III framework and the regulatory capital rules for U.S. banks.

[42] The Other Federal Banking Agencies' regulatory capital rules (12 CFR 324.22) allow institutions to make an opt-out election for similar accounts. See, e.g., 78 FR 55339 (Sept. 10, 2013).

from the sum of the risk-based capital elements are:

- NCUSIF Capitalization Deposit;
- Goodwill;
- Other intangible assets; and
- Identified losses not reflected in the risk-based capital ratio numerator.

In order to achieve a risk-based capital numerator reflecting equity available to cover losses in the event of liquidation, goodwill and other intangible assets would be deducted from both the risk-based capital numerator and denominator. Goodwill and other intangible assets contain a high level of uncertainty regarding a credit union's ability to realize value from these assets, especially under adverse financial conditions.

The proposed rule would address concerns about the NCUSIF deposit reflected on the NCUSIF's balance sheet both as equity to pay losses and as an asset of the insured credit unions. In the proposed rule, the NCUSIF deposit is subtracted from both the numerator and denominator of the risk-based capital ratio.[43] This treatment for the risk-based regulatory capital standard would not alter the NCUSIF deposit accounting treatment for credit unions.

The proposed rule would include a provision to allow for identified losses, not otherwise reflected as adjustments in the risk-based capital numerator, to be deducted to reflect an accurate risk-based capital ratio. The inclusion of identified losses would allow for the calculation of an accurate risk-based capital ratio. Examples of items that would be subject to this provision include shortages in the ALLL, underfunded pension accounts, and unsupported valuations of bond claim receivables.

104(c) Total Risk-Weighted Assets

In developing the proposed risk-weights, NCUA reviewed the Basel accords and both the U.S. and international banking system's existing risk-weight measures.[44] NCUA considered the comments contained in material loss reviews prepared by the NCUA Inspector General and GAO comments in their reviews of the financial services industry's implementation of PCA.[45] As previously mentioned, because the FCUA requires the risk-based measure to include all material risks, consideration was given to credit risk, concentration risk, market risk, interest rate risk, operational risk, and liquidity risk.

Proposed § 702.104(c) would address concentration risk by assigning higher risk-weights to larger percentages of assets in MBLs and real estate loans. The concentration threshold amounts are generally based on the average percentage of assets held in the asset types.

104(c)(1) General

Proposed § 702.104(c)(1) would provide that total risk-weighted assets include risk-weighted on-balance sheet assets as described in § 702.104(c)(2), plus the risk-weighted off-balance sheet assets in § 702.104(c)(3), plus the risk-weighted derivatives in § 702.104(c)(4), minus the risk-based capital numerator deductions in § 702.104(b)(2). The proposal would require a complex credit union to calculate its risk-weighted asset amount for its on- and off-balance sheet exposures. (NCUA's Call Report system would be upgraded to conduct the calculations automatically.) In the proposal, risk-weighted asset amounts would generally be determined by assigning an on-balance sheet asset to broad risk-weight categories according to the asset type, collateral, and level of concentration. Similarly, risk-weighted assets amounts for off-balance sheet items would be calculated using a two-step process: (1) Multiplying the amount of the off-balance sheet exposure by a credit conversion factor (CCF) to determine a credit equivalent amount, and (2) assigning the credit equivalent amount to a relevant risk-weighted category. A credit union would determine its total risk-weighted assets by calculating (1) its risk-weighted assets, minus (2) goodwill and other intangibles, and minus (3) the NCUSIF deposit.

104(c)(2) Risk-Weights for On-Balance Sheet Assets

Proposed § 702.104(c)(2) would define the risk categories and risk-weights to be assigned to each specifically defined on-balance sheet asset. All on-balance sheet assets would be assigned to one of the categories and risk-weights listed in Table 6.

TABLE 6—RISK-WEIGHT CATEGORIES AND ASSOCIATED RISK-WEIGHTS

Risk-weight category	Risk-weight	Items included
Category 1	0 percent	• Cash on hand, which includes the change fund (coin, currency, and cash items), vault cash, vault funds in transit, and currency supplied from automatic teller machines. • NCUSIF capitalization deposit. • Debt instruments unconditionally guaranteed by the NCUA or the FDIC. • U.S. Government obligations directly and unconditionally guaranteed by the full faith and credit of the U.S. Government, including U.S. Treasury bills, notes, bonds, zero coupon bonds, and separate trading of registered interest and principal securities (STRIPS). • Non-delinquent student loans unconditionally guaranteed by a U.S. Government agency.
Category 2	20 percent	• Cash on deposit, which includes balances on deposit in insured financial institutions and deposits in transit. These amounts may or may not be subject to withdrawal by check, and they may or may not bear interest. Examples include overnight accounts, corporate credit union daily accounts, money market accounts, and checking accounts. • Cash equivalents (investments with original maturities of three months or less). Cash equivalents are short-term, highly liquid non-security investments that have an original maturity of 3 months or less at the time of purchase, are readily convertible to known amounts of cash, and are used as part of the credit union's cash management activities. • The total amount of investments with a weighted-average life of one year or less. • Residential mortgages guaranteed by the federal government through the FHA or the VA.

[43] *See* U.S. Govt. Accountability Office, GAO–04–849, Available Information Indicates No Compelling Need for Secondary Capital (2004), *available at http://www.gao.gov/assets/250/243642.pdf.*

[44] The Basel Committee on Banking Supervision (BCBS) published Basel III in December 2010 and revised it in June 2011, *available at http://www.bis.org/publ/bcbs189.htm.*

[45] Section 988 of the Dodd-Frank Wall Street Reform and Consumer Protection Act obligates the NCUA's Inspector General to conduct material loss reviews (MLRs) of credit unions that incurred a loss of $25 million or more to the NCUSIF. In addition, section 988 requires the NCUA's Inspector General to review all losses under the $25 million threshold to assess whether an in-depth review is warranted due to unusual circumstances. The MLRs are available at *http://www.ncua.gov/about/Leadership/CO/OIG/Pages/MaterialLossReviews.aspx; see also* GAO/GGD–98–153 (July 1998); GAO–07–253 (Feb. 2007), GAO–11–612 (June 2011), GAO–12–247 (Jan. 2012), and GAO–13–71 (Jan. 2013).

TABLE 6—RISK-WEIGHT CATEGORIES AND ASSOCIATED RISK-WEIGHTS—Continued

Risk-weight category	Risk-weight	Items included
		• Loans guaranteed 75 percent or more by the SBA, U.S. Department of Agriculture, or other U.S. Government agency.
Category 3	50 percent	• The total amount of investments with a weighted-average life of greater than one year, but less than or equal to three years.
		• The total amount of current and non-delinquent first mortgage real estate loans less than or equal to 25 percent of total assets.
Category 4	75 percent	• The total amount of investments with a weighted-average life of greater than three years, but less than or equal to five years.
		• Current and non-delinquent unsecured credit card loans, other unsecured loans and lines of credit, short-term, small amount loans (STS), new vehicle loans, used vehicle loans, leases receivable and all other loans. (Excluding loans reported as MBLs).
		• Current and non-delinquent first mortgage real estate loans greater than 25 percent of total assets and less than or equal to 35 percent of assets.
Category 5	100 percent	• Corporate credit union nonperpetual capital.
		• The total outstanding principal amount loaned to CUSOs.
		• Current and non-delinquent first mortgage real estate loans greater than 35 percent of total assets.
		• Delinquent first mortgage real estate loans.
		• Other real estate-secured loans less than or equal to 10 percent of assets.
		• MBLs less than or equal to 15 percent of assets.
		• Loans held for sale.
		• The total amount of any foreclosures and repossessed assets.
		• Land and building, less depreciation on building.
		• Any other fixed assets, such as furniture and fixtures and leasehold improvements, less related depreciation.
		• Current non-federally insured student loans.
		• All other assets not specifically assigned a risk-weight but included in the balance sheet.
Category 6	125 percent	• Total amount of all other real estate-secured loans greater than 10 percent of assets and less than or equal to 20 percent of assets.
Category 7	150 percent	• The total amount of investments with a weighted-average life of greater than five years, but less than or equal to ten years.
		• Any delinquent unsecured credit card loans; other unsecured loans and lines of credit; short-term, small amount loans; non-federally guaranteed student loans; new vehicle loans; used vehicle loans; leases receivable; and all other loans (excluding loans reported as MBLs).
		• The total amount of all other real estate-secured loans greater than 20 percent of assets.
		• Any MBLs greater than 15 percent of assets and less than or equal to 25 percent of assets.
Category 8	200 percent	• Corporate credit union perpetual capital.
		• The total amount of investments with a weighted-average life of greater than 10 years.
		• The total amount of MBLs greater than 25 percent of assets, other than MBLs included in Category 3 above.
Category 9	250 percent	• The total value of investments in CUSOs.
		• The total value of mortgage servicing assets.
Category 10	1,250 percent	• An asset-backed investment for which the credit union is unable to demonstrate, as required under § 702.104(d), a comprehensive understanding of the features of the asset-backed investment that would materially affect its performance.

A further explanation of risk-weights based on balance sheet asset type follows.

Cash and investment risk-weights. The proposal generally would maintain the existing structure for measuring risk-weights for most cash items and investments. For specific investments, the risk-weights would continue to be based upon the ''weighted-average life of investments'' (WAL), as defined within the regulation. The WAL is generally the average time until a dollar of principal is repaid.

TABLE 7—PROPOSED RISK-WEIGHTS FOR CASH AND INVESTMENTS

Item	Proposed risk-weight (percent)
Cash on hand	0
NCUA and FDIC issued Guaranteed Notes	0
Direct, unconditional U.S. Government obligations	0
Cash on deposit	20
Cash equivalents	20
Total investments with WAL ≤ 1-year	20
Total investments with WAL >1-year and ≤ 3-years	50
Total investments with WAL >3-year and ≤ 5-years	75
Corporate credit union nonperpetual capital	100
Total investments with WAL >5-year and ≤ 10-years	150
Total investments with WAL > 10-years	200

TABLE 7—PROPOSED RISK-WEIGHTS FOR CASH AND INVESTMENTS—Continued

Item	Proposed risk-weight (percent)
Corporate credit union perpetual capital	200

Cash held by a credit union for normal operations—such as vault cash, ATM cash, and teller cash—typically present no risk because it is protected from loss by a credit union's fidelity bond and would be assigned a zero risk-weight.

To maintain continuity and provide a fair measure of the interest rate and liquidity risks associated with longer term investments, the proposed rule would continue to use the measure in current § 702.105 for investments. The current risk-weights for investments relied on the results of 300 basis point interest rate ''shock tests'' to corroborate the assigned risk-weights. The 300 basis point shock test is a widely accepted measure of interest rate risk. The proposed risk-weight for investments with a WAL of less than 5 years would be lower, relative to the existing rule, to reflect lower interest rate risk and liquidity risk. The proposed risk-weight for investments with a WAL from 5 to 10 years would be about the same and the risk-weight for investments with a WAL over 10 years would be decreased slightly.

The proposal would lower the risk-weight for direct and unconditional U.S. Government obligations (FDIC issued Guaranteed Notes, and other U.S. Government obligations) from the WAL measure to zero risk-weighted assets, and maintain the current zero risk-weight for NCUA Guaranteed Notes.

In the current rule, the investment in nonperpetual and perpetual capital in a corporate credit union are reported in the ''>1–3 Years'' WAL bucket on the Call Report and assigned the associated risk-weight.

Member Business Loans (MBLs). Consistent with the existing rule, the risk portfolio for ''member business loans outstanding'' in the proposal will consist of loans outstanding that qualify as MBLs under NCUA's definition,[46] or under a state's NCUA-approved definition.[47] If a loan qualifies as a MBL when it is originated, it will remain so until it has been repaid in full, sold, or otherwise disposed of. Unused MBL commitments would be addressed in a separate off-balance sheet risk portfolio.

In the current rule, the risk-weights for MBLs apply across three thresholds based on the amount of MBLs as a percentage of total assets. The first threshold applies to concentrations between 0 and 15 percent, the second applies to concentrations over 15 percent and up to 25 percent, and the third applies to concentrations in excess of 25 percent. The proposed rule would maintain the same threshold levels for assigning risk-weights. Since current MBL regulations generally limit MBLs to 12.25 percent of total assets,[48] typically only those credit unions with an MBL exemption are subject to the higher risk-weightings assigned to the higher concentrations of MBLs.

Supervisory experience has demonstrated that certain MBLs present multiple risks for which credit unions should hold additional capital. Many of the largest losses to the NCUSIF occurred in credit unions with high concentrations of MBLs.[49] Similarly, the failures of many small banks between 2008 and 2011 were also largely driven by high concentrations of MBLs. The GAO reported that in the 10 states with 10 or more bank failures between 2008 and 2011, the failure of the small and medium-size banks were largely associated with high concentrations of commercial real estate loans.[50]

As illustrated in Table 8, the proposed rule would moderately increase all of the risk-weights for MBLs.

TABLE 8—COMPARISON OF CURRENT REGULATION AND PROPOSED MBL COMPONENT

Total MBLs	Current MBL risk-weightings [51]—(converted for 8% adequately capitalized level) (percent)	Proposed MBL risk-weightings (percent)
0 to 15% of Assets	75	[52] 100
>15 to 25% of Assets	100	150
Amount over 25%	175	200

MBLs that are government guaranteed at least 75 percent, normally by the Small Business Administration (SBA) or U.S. Department of Agriculture, would receive a lower risk-weight of 20 percent under the proposed rule.

As of June 2013, for the 1,579 complex credit unions with outstanding MBLs, MBLs comprise an aggregate of

[46] *See* 12 CFR 723.1.

[47] *See* 12 CFR 723.20.

[48] *See* 12 CFR 723.16(a).

[49] *See* NCUA Office of the Inspector General, OIG–10–20, OIG Capping Report on Material Loss Reviews (Nov. 23, 2010), Chart G, *available at http://www.ncua.gov/about/Leadership/CO/OIG/Documents/OIG201020CappRpt.pdf.*

[50] U.S. Government Accountability Office, GAO–13–704T, Causes and Consequences of Recent Community Bank Failures (June 12, 2013), page 4, *available at http://www.gao.gov/assets/660/655193.pdf.*

[51] The current MBL risk-weightings were converted to a comparable risk-weight by dividing the current risk-weighting by 8 percent, with 8 percent representing the level of risk-weighted capital needed to be adequately capitalized. In the current rule total MBLs less than the threshold 15 percent of assets receive a 6 percent risk-weighting, which is equivalent to a 75 percent risk-weight under this proposal (6% divided by 8%). The next threshold in the current regulation for total MBLs from 15 percent to 25 percent of assets received an 8 percent risk-weighting, which is equivalent to a 100 percent risk-weight under this proposal (8% divided by 8%) and the highest concentrations of MBLs received a 14 percent risk-weight, which is equivalent to a 175 percent risk-weight under this proposal (14% divided by 8%).

[52] This is consistent with the Other Federal Banking Regulatory Agencies' capital rules (e.g., 12 CFR 324.32), which maintain a 100 percent risk-weight for commercial real estate (CRE) and includes a 150 percent risk-weigh for loans defined as high volatility commercial real estate (HVCRE). *See, e.g.,* 78 FR 55339 (Sept. 10, 2013).

4.80 percent of assets and an average 5.14 percent of assets. Only 70 of the credit unions holding MBLs have MBL portfolios in excess of 15 percent of total assets. The threshold of 15 percent was selected to provide for the possibility of a decline in asset size once a credit union reaches the 12.25 percent statutory limit for MBLs.

NCUA considered developing an alternative version of the current method for computing the MBL's 15 percent concentration level that would have addressed the potential for reduced risk in a well-diversified MBL portfolio. However, before developing such a method, NCUA staff evaluated the diversity of MBL loan types using the data reported in the Call Report. The data was summarized into the following five subcategories: (1) Construction and development, (2) agriculture related loans, (3) non-farm, non-residential property, (4) commercial and industrial loans, and (5) unsecured business loans. NCUA noted as they evaluated the Call Report data that, of the 70 credit unions with MBLs over the 15 percent of assets threshold that would be subject to higher risk-weights on a portion of their MBLs, most tended to primarily originate one particular type of MBL. The Call Report data provides no information on the geographic distribution of the MBL portfolio and the additional information needed to properly identify the nature and extent of any diversification would place an additional data reporting burden on credit unions with an uncertain result. Due to the lack of diversity in the types of MBLs held by credit unions and the reporting requirements to potentially identify diversification, the Board decided to propose maintaining the current risk-weight concentration levels. The Board believes that maintaining the current methodology avoids adding the complexity required to define the adequate level of diversification and associated reporting necessary to implement such an alternative method in the proposed rule.

Real Estate Loans. The current rule excludes from the real estate risk-weights those real estate loans reported as MBLs. The proposed rule would continue this exclusion.

The current standard risk-weighting approach establishes higher capital requirements only for ''long term'' real estate loans, excluding loans that re-price, refinance, or mature within five years or less. By excluding loans that re-price, refinance, or mature within five years or less from higher capital requirements, the current formula does not address a large amount of real estate loans. As a result, credit unions build real estate loan concentrations without appropriate capital. Additionally, the junior lien real estate loans, with a significantly higher loss history, are combined with first mortgage real estate loans. An unintended consequence of the current real estate loan risk-weight is the structuring of mortgage products to minimize capital requirements which could impact the marketability of such loans.

The proposed rule would recognize the lower loss history for current, prudently written first lien real estate-secured loans by assigning a lower risk-weight of 50 percent to the first 25 percent of assets.[53] To account for concentration risk, the risk-weight for first lien real estate loans would increase for loans between 25 and 35 percent of assets from 50 percent to 75 percent. First lien real estate loans over 35 percent of assets would be accorded a 100 percent risk-weight. The threshold of 25 percent is based on the average percent of first mortgage real estate loans to total assets, which, as of June 30, 2013, is 24.9 percent for all complex credit unions. Out of the 2,188 complex credit unions with first mortgage real estate loans, 510 have a concentration in excess of 25 percent of assets and 160 have a concentration in excess of 35 percent of assets.

In the proposed rule, if a credit union holds the first and junior lien(s) on a property, and no other party holds an intervening lien, the credit union could treat the combined exposure as a single loan secured by a first lien for purpose of assigning a risk-weight. A first lien real estate loan could be assigned to the 50 percent risk-weight category only if it is not restructured or modified. A first lien real estate loan modified or structured on a permanent or trial basis solely pursuant to the U.S. Treasury's Home Affordability Mortgage Program (HAMP) would not be considered to be restructured or modified. A first lien real estate loan guaranteed by the federal government through the Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA) generally would be risk-weighted at 20 percent. While a government guarantee against default mitigates credit risk, it does not affect interest rate risk.

During the recent market turmoil, the U.S. housing market experienced significant deterioration and unprecedented levels of mortgage loan defaults and home foreclosures. The cause for the significant increase in loan defaults and home foreclosures included inadequate underwriting standards, high-risk mortgage products providing for negative amortization and significant payment shock to the borrowers, unverified or undocumented income, and a rise in unemployment.[54] Therefore, NCUA is proposing that real estate-secured loans not meeting the definition of first mortgage real estate loans would be referred to as ''other real estate loans'' and assigned a higher risk-weight. First lien real estate loans delinquent for 60 days or more or carried on non-accrual status would be included in the category of other real estate loans for the purpose of assigning the risk-weight.

In the proposed rule, other real estate loans would be assigned a risk-weight of 100 percent for the first 10 percent of assets. To account for concentration risk, the risk-weight for other real estate loans would increase to 125 percent for loans between 10 and 20 percent of assets. Other real estate loans over 20 percent of assets would be risk-weighted 150 percent. The threshold of 10 percent is roughly based on the average percent of other real estate loans to total assets, which, as of June 30, 2013, is 6.85 percent for all complex credit unions. Out of the 2,218 complex credit unions with other real estate loans, 533 have a concentration in excess of 10 percent of assets and 100 have a concentration in excess of 20 percent of assets.

Tables 9, 10, and 11 below provide a comparison of current and proposed risk-weights for real estate-secured loans:

TABLE 9—CURRENT RISK-WEIGHTS FOR LONG TERM REAL ESTATE LOANS

Current Risk-Weights for Long-Term Real Estate Loans (revised for an 8 percent adequately capitalized standard)

Definition: RE Loans—Loans Maturing, Refinancing, or Re-Pricing in 5 years—RE Loans also reported as MBLs = Long-Term RE Loans.

Threshold	Current risk-weight[55] (percent)
0–25% of assets	75
Excess over 25% of assets	175

[53] This is consistent with the Other Federal Banking Regulatory Agencies' capital rules (e.g., 12 CFR 324.32), which maintained the 50 percent risk-weight for one to four family real estate loans that are prudently underwritten, not 90 days or more past due, and not restructured or modified, and a 100 percent risk-weight for such loans otherwise. *See, e.g.,* 78 FR 55339 (Sept. 10, 2013).

[54] In drafting these proposed regulations, NCUA is mindful of the implications of other recently published regulations that have been issued to improve the quality of mortgage underwriting.

TABLE 10—PROPOSED RISK-WEIGHTS FOR FIRST LIEN REAL ESTATE LOANS

Proposed Risk-Weights for First Lien Real Estate Loans	
Definition: 1st Lien RE Loans—1st Lien RE Loans also reported as MBLs—Delinquent 1st Lien RE Loans = First Lien RE Loans.	
Threshold	Proposed risk-weight (percent)
0–25% of assets	50
>25–35% of assets	75
Excess over 35% of assets	100

TABLE 11—PROPOSED RISK-WEIGHTS FOR JUNIOR LIEN REAL ESTATE LOANS

Proposed Risk-Weights for Junior Lien Real Estate Loans	
Definition: Junior Lien RE Loans + Delinquent 1st Lien RE Loans—Junior Lien RE Loans also reported as MBLs = Junior Lien Real Estate Loans.	
Threshold	Proposed risk-weight (percent)
0–10% of assets	100
>10–20% of assets	125
Excess over 20% of assets	150

The aggregate minimum capital requirement, using the proposed risk-weights for first lien and junior lien real estate loans, is slightly less than the current minimum requirement.[56] The proposed risk-weights for real estate loans, however, would result in a higher variance in the minimum capital requirement for individual affected credit unions because the risk-weights better differentiate the risk associated with lien position and concentration.

Current consumer loans. Consumer loans (unsecured credit card loans, lines of credit, automobile loans, and leases) are generally highly desired credit union assets and a key element of providing basic financial services. For most current consumer loans, the proposed rule would assign a risk-weight of 75 percent, which maintains the existing risk-based capital requirement.[57] Non-federally guaranteed student loans, which contain higher risks (e.g., default risk and extension risk), would be risk-weighted at 100 percent in the proposal. Federally guaranteed student loans would receive a zero percent risk-weight.[58] Table 12 below lists the proposed risk-weights for each current consumer loan type reported on the Call Report.

TABLE 12—PROPOSED RISK-WEIGHTS FOR CONSUMER LOAN TYPES REPORTED ON CALL REPORT

Consumer loan type—Less than 60 days delinquent	Proposed risk-weight (percent)
Unsecured Credit Card Loan	75
All Other Unsecured Loans/ Lines of Credit	75
Short-Term, Small Amount Loans	75
Federally Guaranteed Student Loans	0
Non-Federally Guaranteed Student Loans	100
New Vehicle Loans	75
Used Vehicle Loans	75
Leased Receivable	75
All Other Loans/Lines of Credit	75

Delinquent consumer loans. The current risk-based capital measure does not contain a higher risk-weight for delinquent consumer loans. Rising levels of delinquent loans are an indicator of increased risk. To reflect the impaired credit quality of past due loans, the proposal would require credit unions to assign a 150 percent risk-weight to a non-real estate loan if it is 60 days or more past due or in nonaccrual status. NCUA realizes that the ALLL is already reflected in the risk-based capital numerator and increased provision expenses decrease retained earnings. However, the ALLL is intended to cover estimated, incurred losses as of the balance sheet date, rather than unexpected losses. The higher risk-weight on past due exposures ensures sufficient regulatory capital for the increased probability of unexpected losses on these exposures. The higher risk-weights better capture the risk associated with the impaired credit quality of these exposures.

TABLE 13—PROPOSED RISK-WEIGHTS FOR DELINQUENT CONSUMER LOANS

Consumer loan type—Delinquent more than 60 days	Proposed risk-weight (percent)
Unsecured Credit Card Loan	150
All Other Unsecured Loans/ Lines of Credit	150
Short-Term, Small Amount Loans	150
Non-Federally Guaranteed Student Loans	150
New Vehicle Loans	150
Used Vehicle Loans	150
Leased Receivable	150
All Other Loans/Lines of Credit	150

Loans to CUSOs and CUSO investments. Since Call Reports are prepared on a consolidated basis, wholly owned or majority owned CUSO assets are consolidated with the credit union's books and records with applicable risk-weights assigned by the asset type. The current risk-based measure assigns the risk-weight for average-risk assets to the amount of the credit union's investments in CUSOs and loans to CUSOs, as reported in the Other Asset Call Report item. The proposal would increase the risk-weight to 250 percent for investments in CUSOs. This increase is due to the risk of this unsecured equity investment, which is almost always in a non-publicly traded entity. Loans to CUSOs are normally a higher payout priority in the event of liquidation of a CUSO, and thus would be assigned a risk-weight of 100 percent.

TABLE 14—PROPOSED RISK-WEIGHTS FOR LOANS TO CUSOS & INVESTMENTS IN CUSOS

	Proposed risk-weight (percent)
Loans to CUSO	100
Investment in CUSO	250

Mortgage servicing asset (MSA). The proposal would address the complexity and variability of the risks, including interest rate risk and market risk, associated with a MSA by assigning a 250 percent risk-weight. MSAs can become impaired when interest rates fall and borrowers refinance or prepay their mortgage loans. This impairment

[55] The risk-weightings were converted to a comparable risk-weight by dividing the current risk-weighting by 8 percent, representing the level of risk-weighted capital need to be adequately capitalized. In the current rule, long-term real estate loans less than the 25 percent threshold receive a 6 percent risk-weighting, which is equivalent to a 75 percent risk weight under this proposal (6% divided by 8%). Total long-term real estate loans over the 25 percent threshold receive a 14 percent risk-weighting, which is equivalent to a 175 percent risk weight under this proposal (14% divided by 8%).

[56] Analysis of call report data indicates that the proposed risk weights produce an aggregate minimum capital requirement, at the well capitalized level, of 97 percent of the current minimum RBNW requirement for real estate loans when applied to affected credit unions.

[57] This is consistent with the Other Federal Banking Regulatory Agencies' capital rules (e.g., 12 CFR 324.32), which maintained the 100 percent risk-weight for non-delinquent consumer loans. *See, e.g.,* 78 FR 55339 (Sept. 10, 2013).

[58] Up until 2010, guaranteed student loans were available through private lending institutions under the Federal Family Education Loan Program (FFELP). These loans were funded by the Federal government, and administered by approved private lending organizations. In effect, these loans were underwritten and guaranteed by the Federal government, ensuring that the private lender would assume no risk should the borrower ultimately default. Loans issued under this program prior to June 30, 2012 will remain on the books of credit unions for many years.

can lead to earnings volatility and erosion of capital. Additional risks include those associated with valuation and modeling processes.

TABLE 15—PROPOSED RISK-WEIGHT FOR MORTGAGE SERVICING ASSETS

	Proposed risk-weight (percent)
MSA	250

Other on-balance sheet assets. The current risk-based measure for all other balance sheet assets not otherwise assigned a specific risk-weight is 100 percent of the risk-based target. Under the proposed rule, these same assets would receive a 100 percent risk-weight.[59] Credit unions with high levels of other assets, predominately non-earning assets, often have lower net income resulting in pressure on capital.

TABLE 16—PROPOSED RISK-WEIGHTS FOR OTHER ON-BALANCE SHEET ASSETS

Other asset type	Proposed risk-weight (percent)
Loans Held for Sale	100
Foreclosed and Repossessed Assets	100
Land and Building	100
Other Fixed Assets	100
Accrued Interest on Loans	100
Accrued Interest on Investments	100
All Other Assets not otherwise specifically assigned a risk-weight	100

104(c)(2)(i) Category 1—Zero Percent Risk-Weight

Proposed § 702.104(c)(2)(i) would require that credit unions assign a zero percent risk-weight to the following asset types:

- Cash on hand, which includes the change fund (coin, currency, and cash items), vault cash, vault funds in transit, and currency supplied from automatic teller machines.
- NCUSIF capitalization deposit.
- Debt instruments unconditionally guaranteed by the NCUA or the FDIC.
- U.S. Government obligations directly and unconditionally guaranteed by the full faith and credit of the U.S. Government, including U.S. Treasury bills, notes, bonds, zero coupon bonds, and separate trading of registered interest and principal securities (STRIPS).
- Non-delinquent student loans unconditionally guaranteed by a U.S. Government agency.

104(c)(2)(ii) Category 2—20 Percent Risk-Weight

Proposed § 702.104(c)(2)(ii) would provide that credit unions assign a 20 percent risk-weight to the following on-balance sheet assets:

- Cash on deposit, which includes balances on deposit in insured financial institutions and deposits in transit. These amounts may or may not be subject to withdrawal by check, and they may or may not bear interest. Examples include overnight accounts, corporate credit union daily accounts, money market accounts, and checking accounts.
- Cash equivalents (investments with original maturities of three months or less). Cash equivalents are short-term, highly liquid non-security investments that have an original maturity of 3 months or less at the time of purchase, are readily convertible to known amounts of cash, and are used as part of the credit union's cash management activities.
- The total amount of investments with a weighted-average life of one year or less.
- Residential mortgages guaranteed by the federal government through the FHA or the VA.
- Loans guaranteed 75 percent or more by the SBA, U.S. Department of Agriculture, or other U.S. Government agency.

104(c)(2)(iii) Category 3—50 Percent Risk-Weight

Proposed § 702.104(c)(2)(iii) would require that credit unions assign a 50 percent risk-weight to the following on-balance sheet assets:

- The total amount of investments with a weighted-average life of greater than one year, but less than or equal to three years.
- The total amount of current and non-delinquent first mortgage real estate loans less than or equal to 25 percent of total assets.

104(c)(2)(iv) Category 4—75 Percent Risk-Weight

Proposed § 702.104(c)(2)(iv) would require that credit unions assign a 75 percent risk-weight to the following on-balance sheet assets:

- The total amount of investments with a weighted-average life of greater than three years, but less than or equal to five years.
- Current and non-delinquent unsecured credit card loans, other unsecured loans and lines of credit, short-term, small amount loans, new vehicle loans, used vehicle loans, leases receivable and all other loans. (Excluding loans reported as MBLs).
- Current and non-delinquent first mortgage real estate loans greater than 25 percent of total assets and less than or equal to 35 percent of assets.

104(c)(2)(v) Category 5—100 Percent Risk-Weight

Proposed § 702.104(c)(2)(v) would require that credit unions assign a 100 percent risk-weight to the following on-balance sheet assets:

- Corporate credit union nonperpetual capital.
- The total outstanding principal amount of loans to CUSOs.
- Current and non-delinquent first mortgage real estate loans greater than 35 percent of total assets.
- Delinquent first mortgage real estate loans.
- Other real estate-secured loans less than or equal to 10 percent of assets.
- MBLs less than or equal to 15 percent of assets.
- Loans held for sale.
- The total amount of any foreclosures and repossessed assets.
- Land and building, less depreciation on building.
- Any other fixed assets, such as furniture and fixtures and leasehold improvements, less related depreciation.
- Current non-federally insured student loans.
- All other assets not specifically assigned a risk-weight but included in the balance sheet.

104(c)(2)(vi) Category 6—125 Percent Risk-Weight

Proposed § 702.104(c)(2)(vi) would require that credit unions assign a 125 percent risk-weight to the total amount of all other real estate-secured loans greater than 10 percent of assets and less than or equal to 20 percent of assets.

104(c)(2)(vii) Category 7—150 Percent Risk-Weight

Proposed § 702.104(c)(2)(vii) would require that credit unions assign a 150 percent risk-weight to the following on-balance sheet assets:

- The total amount of investments with a weighted-average life of greater than five years, but less than or equal to ten years.
- Any delinquent unsecured credit card loans; other unsecured loans and lines of credit; short-term, small amount loans; non-federally guaranteed student loans; new vehicle loans; used vehicle

[59] This is consistent with the Other Federal Banking Regulatory Agencies' capital rules (e.g., 12 CFR 324.32), which maintained the 100 percent risk-weight for assets not assigned to a risk weight category. *See, e.g.,* 78 FR 55339 (Sept. 10, 2013).

loans; leases receivable; and all other loans (excluding loans reported as MBLs).

- The total amount of all other real estate-secured loans greater than 20 percent of assets.
- Any MBLs greater than 15 percent of assets and less than or equal to 25 percent of assets.

104(c)(2)(viii) Category 8—200 Percent Risk-Weight

Proposed § 702.104(c)(2)(viii) would require that credit unions assign a 200 percent risk-weight to the following on-balance sheet assets:

- Corporate credit union perpetual capital.
- The total amount of investments with a weighted-average life of greater than 10 years.
- The total amount of MBLs greater than 25 percent of assets, other than MBLs included in Category 3 above.

104(c)(2)(ix) Category 9—250 Percent Risk-Weight

Proposed § 702.104(c)(2)(ix) would require that credit unions assign a 250 percent risk-weight to the following on-balance sheet assets:

- The total value of investments in CUSOs.
- The total value of MSAs.

104(c)(2)(x) Category 10—1,250 Percent Risk-Weight

Proposed § 702.104(c)(2)(x) would require that credit unions assign a 1,250 percent risk-weight (8% * 1,250% = 100%) to an asset-backed investment for which the credit union is unable to demonstrate, as required under § 702.104(d), a comprehensive understanding of the features of the asset-backed investment that would materially affect its performance. A 1,250 percent risk-weight is equivalent to holding capital equal to 100 percent of the investment's balance sheet value.[60]

During the recent financial crisis, it became apparent that many federally insured financial institutions relied exclusively on ratings issued by Nationally Recognized Statistical Organizations (NRSOs) and did not perform internal credit analysis of asset-backed investments. Complex credit unions must be able to demonstrate a comprehensive understanding of any investment, particularly an understanding of the features of an asset-backed investment that would materially affect its performance. Upon purchase and on an ongoing basis, the credit union must evaluate, review, and update as appropriate the analysis performed on an asset-backed investment. In the event a credit union is unable to demonstrate a comprehensive understanding of an asset-backed investment, the proposed rule would provide for assigning a risk-weight of 1,250 percent to that investment.

104(c)(3) Risk-Weights for Off-Balance Sheet Activities

Proposed § 702.104(b)(3) would provide that the risk-weighted amounts for all off-balance sheet items are determined by multiplying the notional principal, or face value, by the appropriate conversion factor and the assigned risk-weight as follows:

- A 75 percent conversion factor with a 100 percent risk-weight for unfunded commitments for MBLs.
- A 75 percent conversion factor with a 100 percent risk-weight for MBLs transferred with limited recourse.
- A 75 percent conversion factor with a 50 percent risk-weight for first mortgage real estate loans transferred with limited recourse.
- A 75 percent conversion factor with a 100 percent risk-weight for other real estate loans transferred with limited recourse.
- A 75 percent conversion factor with a 100 percent risk-weight for non-federally guaranteed student loans transferred with limited recourse.
- A 75 percent conversion factor with a 75 percent risk-weight for all other loans transferred with limited recourse.
- A 10 percent conversion factor with a 75 percent risk-weight for total unfunded commitments for non-business loans.

The risk-based capital measure in current § 702.104 includes the amount of commitments outstanding for loans sold with recourse and unused member business loan commitments in the calculation of risk-assets. The current rule recognizes the potential for these commitments to quickly become on-balance sheet assets with their related risks.

Under this proposal, a credit union would calculate the exposure amount of an off-balance sheet component, which is usually the contractual amount multiplied by the applicable credit conversion factor (CCF). This treatment would apply to specific off-balance sheet items, including loans sold with recourse, unfunded commitments for business loans, and other unfunded commitments. The proposed rule would improve risk sensitivity and implement capital requirements for certain exposures through a simple methodology.

Large draws on unused MBL commitments may cause liquidity problems and heighten exposure to credit risk. MBL commitments typically do not feature a ''material adverse conditions'' clause as grounds for revocation. The proposed rule would assign a 75 percent CCF and a 100 percent risk-weight to unused member business loan commitments.

The proposal would retain the existing assumption that the risk exposure associated with recourse loans is analogous to that associated with similar on-balance sheet loans. The proposal would reduce the existing capital requirement for first mortgage real estate loans and consumer loans by assigning them a 75 percent CCF and a risk-weight consistent with the risk-weight assigned for the loan type for on-balance sheet loans.

TABLE 17—PROPOSED CREDIT CONVERSION FACTORS AND RISK-WEIGHTS FOR OFF-BALANCE SHEET ASSETS

	Proposed CCF (percent)	Proposed risk-weight (percent)
Unused MBL commitments	75	100
MBLs sold with recourse	75	100
First mortgage real estate loans sold with recourse	75	50
Other real estate loans sold with recourse	75	100
Non-federally guaranteed student loans sold with recourse	75	100
All other loans sold with recourse	75	75

[60] 8 percent adequately capitalized level * 1,250 percent = 100 percent.

This proposal would add a relatively small capital requirement for the total reported unfunded commitments for non-MBL. The proposal would apply a CCF of 10 percent with a 75 percent risk-weight. NCUA included this commitment with a relatively small capital requirement in order to recognize the risk that a credit union with a substantial amount of unfunded loan commitments may unexpectedly be required to fund such obligations, creating a drain on liquidity and a shifting of assets which could cause a significant increase in the minimum capital requirement.

TABLE 18—PROPOSED CREDIT CONVERSION FACTOR AND RISK-WEIGHT FOR TOTAL UNFUNDED COMMITMENTS FOR NON-BUSINESS LOANS

	CCF (percent)	Proposed risk-weight (percent)
Total unfunded commitments for non-business loans	10	75

The proposed rule would expressly exclude loans sold to the secondary mortgage market that feature representations and warranties customarily required by the U.S. Government (e.g., Ginnie Mae) and government-sponsored enterprises (e.g., Fannie Mae and Freddie Mac). These include representations that the credit union has underwritten the loan and appraised the collateral in conformity with identified standards. These representations provide for the return of assets to the originating credit union in instances of incomplete documentation or fraud. Such representations would be exempt provided the history of payment on these representations is infrequent. Credit enhancing representations and warranties beyond the usual agency requirements would be considered recourse and thus would not be excluded from this risk portfolio.

104(c)(4) Derivatives

Proposed § 702.104(c)(4) would adopt an approach to assign risk-weights to derivatives that is generally consistent with the approach adopted by the FDIC in its recently issued interim final rule regarding regulatory capital.[61]

Under the FDIC's interim rule, derivatives transactions covered under clearing arrangements are treated differently than non-cleared transactions. The NCUA Board is proposing a single regulatory capital approach regardless of the credit union's derivatives transaction clearing status. This selection of regulatory capital treatment is not intended to express a position on credit union clearing. This approach was selected because most credit unions have less than $10 billion in total assets and are exempt from the Commodity Futures Trading Commission's (CFTC) clearing requirements.[62] Credit unions with more than $10 billion in total assets would fall under the CFTC's recently issued final rule regarding clearing exemption for certain swaps entered into by cooperatives.[63]

Derivatives transaction risk-weighting. To determine the risk-weighted asset amount for a derivatives contract under the proposed rule, a credit union would first determine its exposure amount for the contract. It would then apply to that amount a risk-weight based on the counterparty or recognized collateral. For a single derivatives contract that is not subject to a qualifying master netting agreement (as defined further below in this section), the proposed rule would require the exposure amount to be the sum of (1) the credit union's current credit exposure (CCE), which is the greater of the fair value or zero, and (2) potential future exposure (PFE), which is calculated by multiplying the notional principal amount of the derivatives contract by the appropriate conversion factor, in accordance with Table 19 below.

TABLE 19—PROPOSED CONVERSION FACTOR MATRIX FOR DERIVATIVES CONTRACTS

Remaining maturity	Interest rate risk hedge derivatives	All other derivatives[64]
One year or less	0.00	0.10
Greater than one year and less than or equal to five years	0.005	0.12
Greater than five years	0.015	0.15

For multiple derivatives contracts subject to a qualifying master netting agreement, a credit union would calculate the exposure amount by adding the net CCE and the adjusted sum of the PFE amounts for all derivatives contracts subject to that qualifying master netting agreement.

The net CCE is the greater of zero and the net sum of all positive and negative fair values of the individual derivatives contracts subject to the qualifying master netting agreement. The adjusted sum of the PFE amounts would be calculated as described in § 702.104(c)(4)(*ii*)(B) of the proposed rule.

To recognize the netting benefit of multiple derivatives contracts, the contracts would have to be subject to the same qualifying master netting agreement. For example, a credit union with multiple derivatives contracts with a single counterparty could add the counterparty exposure if the transactions fall under an International Swaps and Derivatives Association, Inc. (ISDA) Master Agreement and Schedule.

If a derivatives contract is collateralized by financial collateral, a credit union would first determine the exposure amount of the derivatives contract as described in § 702.14(c)(4)(i). Next, to recognize the credit risk mitigation benefits of the financial collateral, the credit union would use

[61] *See* 78 FR 55339 (Sept. 10, 2013).

[62] 17 CFR part 50.

[63] 78 FR 52285 (Aug. 22, 2013); *see also* 17 CFR 50.51.

[64] This would include all other derivatives contracts including foreign exchange, equity, credit, and commodity.

the approach for collateralized transactions as described in § 702.104(c)(4)(v)(B) of the proposed rule.

Collateralized transactions. Under the proposed rule, NCUA would permit a credit union to recognize risk-mitigating effects of financial collateral. The collateralized portion of the exposure receives the risk-weight applicable to the collateral. In all cases, (1) the collateral must be subject to a collateral agreement (for example, an ISDA Credit Support Annex) for at least the life of the exposure; (2) the credit union must revalue the collateral at least every three months; and (3) the collateral and the exposure must be denominated in U.S. dollars.

Generally, the risk-weight assigned to the collateralized portion of the exposure would be no less than 20 percent. However, the collateralized portion of an exposure may be assigned a risk-weight of less than 20 percent for the following exposures. Derivatives contracts that are marked to fair value on a daily basis and subject to a daily margin maintenance agreement could receive (1) a zero percent risk-weight to the extent that contracts are collateralized by cash on deposit, or (2) a 10 percent risk-weight to the extent that the contracts are collateralized by an exposure that qualifies for a zero percent risk-weight under § 702.104(c)(2)(i) of the proposed rule. In addition, a credit union could assign a zero percent risk-weight to the collateralized portion of an exposure where the financial collateral is cash on deposit. It also could do so if the financial collateral is an exposure that qualifies for a zero percent risk-weight under § 702.104(c)(2)(i) of the proposed rule, and the credit union has discounted the fair value of the collateral by 20 percent. The credit union would be required to use the same approach for similar exposures or transactions.

Risk management guidance for recognizing collateral. Before a credit union recognizes collateral for credit risk mitigation purposes, it should: (1) Conduct sufficient legal review to ensure, at the inception of the collateralized transaction and on an ongoing basis, that all documentation used in the transaction is binding on all parties and legally enforceable in all relevant jurisdictions; (2) consider the correlation between risk of the underlying direct exposure and collateral in the transaction; and (3) fully take into account the time and cost needed to realize the liquidation proceeds and the potential for a decline in collateral value over this time period.

A credit union should also ensure that the legal mechanism under which the collateral is pledged or transferred ensures that the credit union has the right to liquidate or take legal possession of the collateral in a timely manner in the event of the default, insolvency, or bankruptcy (or other defined credit event) of the counterparty and, where applicable, the custodian holding the collateral.

In addition, a credit union should ensure that it (1) has taken all steps necessary to fulfill any legal requirements to secure its interest in the collateral so that it has, and maintains, an enforceable security interest; (2) has set up clear and robust procedures to ensure satisfaction of any legal conditions required for declaring the borrower's default and prompt liquidation of the collateral in the event of default; (3) has established procedures and practices for conservatively estimating, on a regular ongoing basis, the fair value of the collateral, taking into account factors that could affect that value (for example, the liquidity of the market for the collateral and deterioration of the collateral); and (4) has in place systems for promptly requesting and receiving additional collateral for transactions whose terms require maintenance of collateral values at specified thresholds.

104(d) Due Diligence Requirements for Asset-Backed Investments

Proposed § 702.104(d) would contain due diligence requirements credit unions would have to implement in demonstrating a comprehensive understanding of the features of an asset-backed investment. The NCUSIF has experienced significant losses by credit unions that invested heavily in asset-backed investments without the board of directors or staff having sufficient expertise to understand and manage the risks. The proposed rule defines the general content of an adequate analysis and the timing of the analysis.

(d)(1)

Proposed § 702.104(d)(1) would provide that if a credit union is unable to demonstrate a comprehensive understanding, as required under proposed § 702.104(d)(2), of the features of an asset-backed investment exposure that would materially affect the performance of the exposure, the credit union must assign a 1,250 percent risk-weight to the asset-backed investment exposure. The proposed rule would also require that the credit union's analysis be commensurate with the complexity of the asset-backed investment and the materiality of the position in relation to regulatory capital according to this part.

(d)(2)

Proposed § 702.104(d)(2) would provide that a credit union must demonstrate its comprehensive understanding of each asset-backed investment exposure under § 702.104(d)(1) by:

- Conducting an analysis of the risk characteristics of an investment's exposure prior to acquiring the investment and documenting such analysis within three business days after acquiring the exposure, considering:
  - Structural features of the investment that would materially impact the performance of the exposure, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, fair value triggers, the performance of organizations that service the position, and deal-specific definitions of default;
  - Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average loan-to-value ratio; and industry and geographic diversification data on the underlying exposure(s);
  - Relevant market data of the asset-backed investment, for example, bid-ask spreads, most recent sales price and historical price volatility, trading volume, implied market rating, and size, depth, and concentration level of the market for the investment; and
  - For reinvestment exposures, performance information on the underlying investment exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the investment exposures; and
- On an ongoing basis (no less frequently than quarterly), evaluating, reviewing, and updating as appropriate the analysis required under this section for each investment exposure.

Current Section 702.105 Weighted-Average Life of Investments

As discussed above in the definitions part of the section-by-section analysis, proposed § 702.105 would replace current § 702.105 regarding weighted-average life of investments, and the definition in the current section would be moved to the definition of ''weighted-average life of investments'' in proposed § 702.2.

Section 702.105 Individual Minimum Capital Requirements

Capital helps ensure individual credit unions can continue to serve as credit intermediaries even during times of stress, thereby promoting the safety and soundness of the U.S. credit union system. As with the current Part 702, the proposed capital rules would be minimum standards generally based on broad credit risk and concentration considerations.

A complex credit union is generally expected to have internal processes for assessing capital adequacy that reflects a full understanding of its risk exposure and to ensure that it holds capital corresponding to those risks. The nature of such capital adequacy assessments should be commensurate with the credit union's size, complexity, and risk profile. Supervisory assessment of capital adequacy will take into account whether a credit union plans appropriately to maintain an adequate level of capital given its activities and risk profile, as well as risks and other factors that can affect a credit union's financial condition. The supervisory assessment will also consider the potential impact on earnings and the capital base from prospective economic conditions. For this reason, a supervisory assessment of capital adequacy may differ significantly from conclusions that might be drawn solely from the level of a credit union's regulatory capital ratios.

In light of these considerations, as a prudent matter, a complex credit union is generally expected to operate with capital positions above the minimum risk-based capital measures and hold capital commensurate with the level and nature of the risk to which it is exposed. Credit unions contemplating significant expansion proposals are expected to maintain strong capital levels above the minimum ratios and should not allow significant diminution of financial strength below these strong levels to fund their expansion plans. Complex credit unions with high levels of risk are also expected to operate with capital well above minimum risk-based standards.

This proposed rule includes a provision that NCUA may require a higher minimum risk-based capital ratio for an individual credit union in any case where the circumstances, such as the level of risk of a particular investment portfolio, the risk management systems, or other information, indicate that a higher minimum risk-based capital requirement is appropriate. For example, higher capital may be appropriate for a credit union that has significant exposure to declines in the economic value of its capital due to changes in interest rates. Part 747 would contain procedures for requiring a credit union to maintain a higher minimum capital.

105(a) General

Proposed § 702.105(a) would provide that the rules and procedures specified in this paragraph apply to the establishment of an individual minimum capital requirement for a credit union that varies from any of the risk-based capital requirement(s) that would otherwise apply to the credit union under this part.

105(b) Appropriate Considerations for Establishing Individual Minimum Capital Requirements

Proposed § 702.105(b) would provide that minimum capital levels higher than the risk-based capital requirements under this part may be appropriate for individual credit unions. NCUA may establish increased individual minimum capital requirements upon its determination that the credit union's capital is or may become inadequate in view of the credit union's circumstances. In addition, the proposed rule provides the following situations in which NCUA may find that higher capital levels are appropriate:

- A credit union is receiving special supervisory attention.
- A credit union has or is expected to have losses resulting in capital inadequacy.
- A credit union has a high degree of exposure to interest rate risk, prepayment risk, credit risk, concentration risk, certain risks arising from nontraditional activities or similar risks, or a high proportion of off-balance sheet risk.
- A credit union has poor liquidity or cash flow.
- A credit union is growing, either internally or through acquisitions, at such a rate that supervisory problems are presented that are not adequately addressed by other NCUA regulations or other guidance.
- A credit union may be adversely affected by the activities or condition of its CUSOs or other persons or entities with which it has significant business relationships, including concentrations of credit.
- A credit union with a portfolio reflecting weak credit quality or a significant likelihood of financial loss, or which has loans or securities in nonperforming status or on which borrowers fail to comply with repayment terms.
- A credit union has inadequate underwriting policies, standards, or procedures for its loans and investments.
- A credit union has failed to properly plan for, or execute, necessary retained earnings growth.
- A credit union has a record of operational losses that exceeds the average of other similarly situated credit unions; has management deficiencies, including failure to adequately monitor and control financial and operating risks, particularly the risks presented by concentrations of credit and nontraditional activities; or has a poor record of supervisory compliance.

105(c) Standards for Determination of Appropriate Individual Minimum Capital Requirements

Proposed § 702.105(c) would provide that the appropriate minimum capital levels for an individual credit union cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria, and that the decision is necessarily based, in part, on a subjective judgment grounded in agency expertise. The proposed rule provides the following additional factors that may be considered by NCUA in making its determination:

- The conditions or circumstances leading to the determination that a higher minimum capital requirement is appropriate or necessary for the credit union.
- The urgency of those circumstances or potential problems.
- The overall condition, management strength, and future prospects of the credit union and, if applicable, its subsidiaries, affiliates, and business partners.
- The credit union's liquidity, capital, and other indicators of financial stability, particularly as compared with those of similarly situated credit unions.
- The policies and practices of the credit union's directors, officers, and senior management as well as the internal control and internal audit systems for implementation of such adopted policies and practices.

Current Section 702.106 Standard Calculation of Risk-Based Net Worth Requirement

The proposed rule would eliminate current § 702.106 regarding the standard RBNW requirement. The current rule is structured so that credit unions have a standard measure and optional alternatives for measuring a credit union's RBNW. The proposed rule, on the other hand, would contain only a single measurement for calculating a credit union's risk-based capital ratio.

Accordingly, current § 702.106 would no longer be necessary and has been eliminated from the proposed rule.

Current Section 702.107 Alternative Component for Standard Calculation

The proposed rule would eliminate current § 702.107 regarding the use of alternative risk-weight measures. NCUA believes the current alternative risk-weight measures add unnecessary complexity to the rule. The current alternative risk-weights focus almost exclusively on interest rate risk, which has resulted in some credit unions with higher risk operations reducing their regulatory minimum capital requirement to a level inconsistent with the risk of the credit union's business model. The proposed risk-weights would provide for lower risk-based capital requirements for those credit unions making good quality loans, investing prudently, and avoiding concentrations of assets.

Current Section 702.108 Risk Mitigation Credit

This proposed rule would eliminate § 702.108 regarding the risk mitigation credit. The risk mitigation credit provides a system for reducing a credit union's risk-based capital requirement if it can demonstrate significant mitigation of credit or interest rate risk. Credit unions have rarely taken advantage of risk mitigation credits, with only one credit union receiving a risk mitigation credit. The review of a credit union's application for a risk mitigation credit requires a substantial commitment of NCUA and credit union resources. In practice, it is very difficult to determine the validity of the credit union's mitigation efforts and how much mitigation credit to allow.

Mandatory and Discretionary Supervisory Actions

Section 216(a)(2) of the FCUA directs NCUA to take prompt corrective actions to resolve the problems of insured credit unions.[65] To facilitate this purpose, the FCUA defined five regulatory capital categories that include capital thresholds for a defined net worth ratio and risk-based capital measure for ''complex'' credit unions. These five PCA categories are: Well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. Credit unions that fail to meet these capital measures are subject to increasingly strict limits on their activities.[66]

The proposal would generally maintain the existing mandatory and discretionary supervisory actions (PCA actions) currently contained in §§ 702.201 through 702.204.[67] The PCA actions aid in accomplishing the PCA's purpose and provide a transparent guide of supervisory actions that a credit union can expect as capital measures decline.

Section 702.106 Prompt Corrective Action for Adequately Capitalized Credit Unions

The proposed rule would renumber current § 702.201 as proposed § 702.106, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.106(a) would be amended to remove the requirement that adequately capitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.107 Prompt Corrective Action for Undercapitalized Credit Unions

The proposed rule would renumber current § 702.202 as proposed § 702.107, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.107(a)(1) would be amended to remove the requirement that undercapitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.108 Prompt Corrective Action for Significantly Undercapitalized Credit Unions

The proposed rule would renumber current § 702.203 as proposed § 702.108, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.108(a)(1) would be amended to remove the requirement that significantly undercapitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.109 Prompt Corrective Action for Critically Undercapitalized Credit Unions

The proposed rule would renumber current § 702.204 as proposed § 702.109, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.109(a)(1) would be amended to remove the requirement that critically undercapitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.110 Consultation With State Official on Proposed Prompt Corrective Action

The proposed rule would renumber current § 702.205 as proposed § 702.110, and would make only minor conforming amendments to the text of the section.

Section 702.111 Net Worth Restoration Plans (NWRPs)

The proposed rule would renumber current § 702.206 as proposed § 702.111, and would make only minor conforming amendments to the text of most of the subsections, with a few exceptions discussed in more detail below.

111(c) Contents of NWRP

Proposed § 702.111(c)(1)(i) would provide that the contents of an NWRP must specify a quarterly timetable of steps the credit union will take to increase its net worth ratio *and risk-based capital ratio, if applicable,* so that it becomes adequately capitalized by the end of the term of the NWRP, and will remain so for four (4) consecutive calendar quarters; and that if complex, the credit union is subject to a RBNW requirement that may require a net worth ratio higher than 6 percent to become adequately capitalized. The proposed rule would add the italicized words ''and risk-based capital ratio, if applicable'' above to clarify that an NWRP prepared by a complex credit union must specify the steps the credit union will take to increase its risk-based capital ratio.

In addition, consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.111(c)(1)(ii) would be amended to remove the requirement that credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

[65] 12 U.S.C. 1790d(a)(2).

[66] Credit union defined as ''new credit unions'' under section 1790(d)(2) of the FCUA are subject to an alternative PCA system.

[67] The requirements would be moved to proposed §§ 702.106 through 702.109.

111(g) NWRP Not Approved

111(g)(4) Submission of Multiple Unapproved NWRPs

Proposed § 702.111(g)(4) would provide that the submission of more than two NWRPs that are not approved is considered an unsafe and unsound condition and may subject the credit union to administrative enforcement actions under section 206 of the FCUA.[68] NCUA regional directors have expressed concerns that some credit unions have in the past submitted multiple NWRPs that could not be approved due to non-compliance with the requirements of the current rule, resulting in delayed implementation of actions to improve the credit union's net worth. The proposed amendments are intended to clarify that submitting multiple NWRPs that are rejected by NCUA, or the applicable state official, because of the inability of the credit union to produce an acceptable NWRP is an unsafe and unsound practice and may subject the credit union to further actions as permitted under the FCUA.

111(j) Termination of NWRP

Proposed § 702.111(j) would provide that, for purposes of part 702, an NWRP terminates once the credit union has been classified as adequately capitalized or well capitalized and for four consecutive quarters. The proposed paragraph would also provide as an example that if a credit union with an active NWRP attains the classification as adequately capitalized on December 31, 2015, this would be quarter one and the fourth consecutive quarter would end September 30, 2016. The proposed paragraph is intended to provide clarification for credit unions on the timing of an NWRP's termination.

Section 702.112 Reserves

The proposed rule would renumber current § 702.401 as proposed § 702.112. Consistent with the text of current § 702.401(a), it also would require that each credit union establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or, in special cases, by the NCUA Board or appropriate state official.

Regular reserve account. As mentioned above, the proposed rule would eliminate current § 702.401(b) regarding the regular reserve account from the earnings retention process. Additionally, the process and substance of requesting permission for charges to the regular reserve would be eliminated upon the effective date of a final rule. Upon the effective date of a final rule, federal credit unions would close out the regular reserve balance into undivided earnings. A state-chartered, federally insured credit union may still be required to maintain a regular reserve account by its respective state supervisory authority.

The Board initially included the regular reserve in part 702 for purposes of continuity from past regulatory expectations that involved this account to ease credit unions' transition to the then new PCA rules. The regular reserve account is not necessary to satisfying the statutory ''earnings retention requirement'' and is not required under GAAP. CUMAA requires credit unions that are not well capitalized to ''annually set aside as net worth an amount equal to not less than 0.4 percent of its total assets.'' [69] The earnings retention requirement in current § 702.201(a) requires a credit union that is not well capitalized to increase the ''dollar amount of its net worth either in the current quarter, or on average over the current and three preceding quarters by an amount equivalent to at least 1/10th percent of total assets.'' Under the current rule, the credit union must then ''quarterly transfer that amount'' from undivided earnings to the regular reserve account. Increasing net worth alone satisfies the statutory earnings retention requirement. The additional step of transferring earnings from the undivided earnings account to the regular reserve account is not necessary to meet the PCA statutory requirement.

The regular reserve was initially incorporated into the earnings retention process because of familiarity. Prior to PCA, credit unions used the regular reserve account under the former reserving process prescribed by the now repealed section 116 of the FCUA.[70] However, examiner experience indicates that since PCA was first implemented, the regular reserve account in part 702 has been a source of unnecessary confusion. Some credit unions have continued to make transfers as if the repealed section 116 were still in force. Other credit unions have confused the purpose of the regular reserve in the current PCA process. Thus, some credit unions have made earnings transfers that are not required and others have done so without first increasing net worth.

For these reasons, the Board now considers the regular reserve account to be obsolete and proposes its elimination upon the effective date of a final rule. The proposed rule eliminates the cross references to the regular reserve requirement as discussed in more detail in each corresponding part of the section-by-section analysis.

Section 702.113 Full and Fair Disclosure of Financial Condition

The proposed rule would renumber current § 702.402 as proposed § 702.113, and would make only minor conforming amendments to the text of the section with one exception, which is discussed in more detail below.

113(d) Charges for Loan Losses

Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.113(d) would be amended to remove paragraph (d)(4) of the current rule, which provided that the maintenance of an ALLL shall not affect the requirement to transfer earnings to a credit union's regular reserve when required under subparts B or C of this part.

Section 702.114 Payment of Dividends

The proposed rule would renumber current § 702.402 as proposed § 702.114 and make a number of amendments to the text of subsections (a) and (b), and add new subsection (c).

114(a) Restriction on Dividends

Current § 702.402(a) permits credit unions with a depleted undivided earnings balance to pay dividends out of the regular reserve account without regulatory approval, as long as the credit union will remain at least adequately capitalized. Proposed § 702.114(a), however, would allow only credit unions that have substantial net worth, but no undivided earnings, to pay dividends without regulatory approval.

114(b) Payment of Dividends if Retained Earnings Depleted

Proposed § 702.114(b) would provide that well capitalized credit unions could pay dividends only if their net worth classification do not fall below adequately capitalized. As with the current § 702.402(b)(2), proposed § 702.114(b)(2) would require approval from the appropriate Regional Director, and if state-chartered, the appropriate state official, if after payment of the dividend the credit union's net worth classification would fall below adequately capitalized. In addition, the proposed rule would require that the credit union's request for written approval include the credit union's plan for eliminating any negative retained earnings balance. Secondary capital accounts would continue to be excluded

[68] 12 U.S.C. 1786 and 1790d.

[69] 12 U.S.C. 1790(e)(1).

[70] 12.U.S.C. 1762.

as a direct source of dividend payments. Dividends would not be considered operating losses and could not be paid out of secondary capital.

114(c) Restriction on Payments of Dividends if, After Payment of Dividends, the Credit Union's Net Worth Ratio Would Be Less Than 6 Percent

Proposed § 702.114(c) would prohibit a credit union from unreasonably dissipating its capital through excessive dividend payments or a refund of interest in a manner that would undermine the safety and soundness of the credit union. In particular, the proposed rule would prohibit a credit union currently classified as well capitalized from paying dividend rates that are higher than the prevailing market rates, declaring a non-repetitive dividend, or approving a refund of interest if, after the payment of the dividend, the credit union's net worth ratio would decline to less than 6 percent in the current quarter. This new provision would prevent the unsafe dissipation of capital through the payment of special or bonus dividends or interest refunds while still allowing for continuity of operations.

B. Subpart B—Alternative Prompt Corrective Action for New Credit Unions

The proposed rule would add new subpart B, which would contain most of the capital adequacy rules that would apply to ''new'' credit unions. Section 216(b)(2)(B)(iii) of the FCUA defines a ''new'' credit union as one that has been in operation for 10 years or less, or has $10 million or less in total assets.[71]

The current net worth measures, net worth classification, and text of the PCA requirements applicable to new credit unions would be renumbered. They would remain mostly unchanged in the proposed rule, however, except for the following substantive amendments:

(1) Elimination of the regular reserve account requirement in current § 702.401(b) and all cross references to the requirement;

(2) Addition of new § 701.206(f)(3) clarifying that the submission of more than two revised business plans would be considered and unsafe and unsound condition; and

(3) Amendment of the requirements of current § 702.403 regarding the payment of dividends.

Each of these substantive amendments is discussed in more detail below.

[71] 12 U.S.C. 1790d(b)(2)(B)(iii).

Section 702.201 Scope and Definition

The proposed rule would renumber current § 702.301 as proposed § 702.201. The proposed rule would eliminate the ability of a credit union to regain a designation of new after reporting total assets in excess of $10 million.

Section 216(b)(2) of the FCUA requires the NCUA to prepare regulations that apply to new credit unions. The FCUA further requires that rules for new credit unions prevent evasion of the purpose of section 216, which provides new credit unions a period of time to accumulate net worth. NCUA recently conducted a postmortem review of a credit union failure that caused a loss to the NCUSIF. The review revealed that the credit union intentionally reduced its total assets below $10 million to regain the designation ''new'' credit union under current part 702 and the associated lower net worth requirement. Shifting back and forth between the minimum capital requirement for ''new'' and all other credit unions resulted in slowed capital accumulation, which contributed to the loss incurred by the NCUSIF. Accordingly, NCUA is now proposing to amend the definition of ''new'' credit union in current § 702.301 to eliminate such practices in the future.

In general, credit unions attaining an asset size of $10 million begin to offer a greater range of services and loans, which increase the credit union's complexity and risk to the NCUSIF. In the event a new credit union reports total assets of over $10 million and then subsequently declines to under $10 million, the additional PCA regulatory requirements under the proposed rule would not be substantially increased. Both new credit unions and non-new credit unions with net worth ratios of less than 6 percent, but over 2 percent, are required under either § 702.206 or § 702.111 of the proposal to operate under substantially similar plans to restore their net worth. For example, a new credit union with a net worth ratio of 5 percent is required to operate under a revised business plan, and a non-new credit union with a net worth ratio of 5 percent is required to operate under a NWRP. Therefore, any burden associated with this change to the requirements of part 702 should be minimal.

Section 702.202 Net Worth Categories for New Credit Unions

The proposed rule would renumber current § 702.302 as proposed § 702.202, and would make only minor conforming amendments to the text of the section.

Section 702.203 Prompt Corrective Action for Adequately Capitalized New Credit Unions

The proposed rule would renumber current § 702.303 as proposed § 702.203, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.203 would be amended to remove the requirement that adequately capitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.204 Prompt Corrective Action for Moderately Capitalized, Marginally Capitalized or Minimally Capitalized New Credit Unions

The proposed rule would renumber current § 702.304 as proposed § 702.204, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), which is discussed in more detail below, proposed § 702.204(a)(1) would be amended to remove the requirement that such credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.205 Prompt Corrective Action for Uncapitalized New Credit Unions

The proposed rule would renumber current § 702.305 as proposed § 702.205, and would make only minor conforming amendments to the text of the section.

Section 702.206 Revised Business Plans (RBP) for New Credit Unions

The proposed rule would renumber current § 702.306 as proposed § 702.206, would make mostly minor conforming amendments to the text of the section, and would add new § 702.206(g)(3). Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), which is discussed in more detail below, proposed § 702.206(b)(3) would be amended to remove the requirement that new credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

206(g)(3) Submission of Multiple Unapproved Revised Business Plans

Proposed § 702.206(g)(3) would provide that the submission of more than two RBPs that are not approved is considered an unsafe and unsound condition and may subject the credit

union to administrative enforcement actions under section 206 of the FCUA.[72] NCUA regional directors have expressed concerns that some credit unions have in the past submitted multiple RBPs that could not be approved due to non-compliance with the requirements of the current rule, resulting in delayed implementation of actions to improve the credit union's net worth. The proposed amendments are intended clarify that submitting multiple RBPs that are rejected by NCUA, or the state official, because of the failure of the credit union to produce an acceptable RBP is an unsafe and unsound practice and may subject the credit union to further actions as permitted under the FCUA.

Section 702.207 Incentives for New Credit Unions

The proposed rule would renumber current § 702.307 as proposed § 702.207, and would make only minor conforming amendments to the text of the section.

Section 702.208 Reserves

The proposed rule would add new § 702.208 regarding reserves for new credit unions to the rule and, consistent with the text of current reserve requirement at § 702.401(a), would require that each new credit union establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or in special cases by the NCUA Board or appropriate state official.

As explained under § 702.112, the proposed rule would eliminate the regular reserve account under current § 702.402(b) from the earnings retention requirement. Additionally the process and substance of requesting permission for charges to the regular reserve would be eliminated upon the effective date of a final rule. Upon the effective date of a final rule federal credit unions would close out the regular reserve balance into undivided earnings. A federally insured state chartered credit union may still be required to maintain a regular reserve account as dictated by state law or by its respective state supervisory authority.

Section 702.209 Full and Fair Disclosure of Financial Condition

The proposed rule would move the full and fair disclosure of financial condition requirements contained in the current § 702.402, and applicable to new credit unions, to new § 702.209 of the proposed rule. No substantive changes to the current full and fair disclosure of financial condition requirements for new credit unions are intended.

Section 702.210 Payment of Dividends

The proposed rule would reorganize the rules regarding the payment of dividends contained in the current § 702.403, which also apply to new credit unions, to new § 702.210 of the proposed rule. The proposed rule would make a number of amendments to the text of paragraphs (a) and (b) of the current rule, and add a new paragraph (c). Each of these changes is discussed in more detail below.

210(a) Restriction on Dividends

Current § 702.402(a) permits credit unions with a depleted undivided earnings balance to pay dividends out of the regular reserve account without regulatory approval, as long as the credit union will remain at least adequately capitalized. Proposed § 702.210(a), however, would allow only new credit unions that have substantial net worth, but no undivided earnings, to pay dividends without regulatory approval.

210(b) Payment of Dividends if Retained Earnings Depleted

Proposed § 702.210(b) would provide that well capitalized new credit unions could pay dividends only if their net worth classification do not fall below adequately capitalized. As with the current § 702.402(b)(2), proposed § 702.210(b)(2) would require approval from the appropriate Regional Director, and if state-chartered, the appropriate state official, if after payment of the dividend the credit union's net worth classification would fall below adequately capitalized. In addition, the proposed rule would require that the credit union's request for written approval include the credit union's plan for eliminating any negative retained earnings balance. Secondary capital accounts would continue to be excluded as a direct source of dividend payments. Dividends would not be considered operating losses and could not be paid out of secondary capital.

210(c) Restriction on Payments of Dividends if, After Payment of Dividends, the Credit Union's Net Worth Ratio Would Be Less Than 6 Percent

Proposed § 702.210(c) would prohibit a new credit union from unreasonably dissipating its capital through excessive dividend payments or a refund of interest in a manner that would undermine the safety and soundness of the credit union. In particular, the proposed rule would prohibit a new credit union currently classified as well capitalized from paying dividend rates that are higher than the prevailing market rates, declaring a non-repetitive dividend, or approving a refund of interest if, after the payment of the dividend or a refund of interest, the credit union's net worth ratio would decline to less than 6 percent in the current quarter. This new provision would prevent the unsafe dissipation of capital through the payment of special or bonus dividends or interest refunds while still allowing for continuity of operations.

C. Part 747—Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations

Subpart L—Issuance, Review and Enforcement of Orders Imposing Prompt Corrective Action

Section 747.2006 Review of Order Imposing Individual Minimum Capital Requirements

Section 216(k) of the FCUA provides that ''material supervisory determinations, including decisions to require prompt corrective action, made . . . by [NCUA] officials other than the [NCUA] Board may be appealed to the [NCUA] Board'' through an independent appellate process ''pursuant to separate procedures prescribed by regulation.''[73] Consistent with the requirements of section 216(k), decisions of NCUA staff to impose a discretionary supervisory action (including imposing individual minimum capital requirements on a credit union) would continue to be treated as ''material supervisory determinations.'' Proposed § 747.2006 would require that NCUA provide reasonable prior notice and an independent process for appealing NCUA staff decisions to impose individual minimal capital requirements (IMCR) under proposed § 702.105.

2006(a) Notice of Proposed Individual Minimum Capital Requirements

Proposed § 747.2006(a) would require NCUA to provide a credit union with reasonable prior notice when NCUA proposes to impose IMCR for a particular credit union pursuant to proposed § 702.105. In addition, the proposed rule would require NCUA to forward a copy of the notifying letter to the appropriate state supervisory authority (SSA) if a state-chartered credit union would be subject to an IMCR.

[72] 12 U.S.C. 1786 and 1790d.

[73] Section 1790d(k).

2006(b) Contents of the Notice

Proposed § 747.2006(b) would require that the notice of intention to impose IMCR for a credit union based on particular capital conditions at a credit union state all of the following: (1) The credit union's net worth ratio, risk-based capital ratio and net worth classification. (2) The specific minimum capital levels that the NCUA Board intends to impose on the credit union under the IMCR, and the specific causes for determining that the higher IMCR is necessary or appropriate for the credit union. (3) The proposed schedule for compliance with the new requirement. (4) That the credit union must file a written response to the notice, which shall be no less than 30 calendar days from the date of service of the notice.

In addition, proposed § 747.2006(b) would provide that the NCUA Board may extend the time period for good cause, and that the time period for response by the insured credit union may be shortened for good cause when, in the opinion of NCUA, the condition of the credit union so requires, and NCUA informs the credit union of the shortened response period in the notice; or with the consent of the credit union.

2006(c) Contents of Response to Notice

Proposed § 747.2006(c) would require that the credit union's response to a notice under § 747.2006(b) of this section include the following: (1) An explanation of why it contends the IMCR is not an appropriate exercise of discretion under this part; (2) a request that the NCUA Board modify or not issue the IMCR; (3) any information, mitigating circumstances, documentation, or other evidence in support of the credit union's position that the credit union wants NCUA to consider in deciding whether to establish or to amend an IMCR for the credit union; and (4) if desired, a request for a recommendation from the NCUA's Ombudsman pursuant to § 747.2006(g).

2006(d) Failure To File Response

Proposed § 747.2006(d) would provide that failure by the credit union to respond within 30 days, or such other time period as may be specified by NCUA, may constitute a waiver of any objections to the proposed IMCR or to the schedule for complying with it, unless NCUA has provided an extension of the response period for good cause.

2006(e) Final Decision by NCUA

Proposed § 747.2006(e) would provide that after the expiration of the response period, NCUA will decide whether or not the proposed IMCR should be established for the credit union, or whether that proposed requirement should be adopted in modified form, based on a review of the credit union's response and other relevant information. The proposed rule would require NCUA's decision to address comments received within the response period from the credit union and the appropriate state supervisory authority (if a state-chartered credit union is involved); and to state the level of capital required, the schedule for compliance with this requirement, and any specific remedial action the credit union could take to eliminate the need for continued applicability of the IMCR. In addition, the proposal would require NCUA to provide the credit union and the appropriate SSA (if a state-chartered credit union is involved) with a written decision on the IMCR, addressing the substantive comments made by the credit union and setting forth the decision and the basis for that decision. Finally, proposed § 747.2006(e) would provide that this decision represents final agency action; and that the IMCR becomes effective and binding upon the credit union upon receipt of the decision by the credit union.

2006(f) Request To Modify or Rescind IMCR

Proposed § 747.2006(f) would provide that the IMCR shall remain in effect while such request is pending unless otherwise ordered by the NCUA Board, but would permit a credit union that is subject to an existing IMCR to request in writing that the NCUA Board reconsider the terms of the IMCR due to changed circumstances. In addition the proposed rule would provide that a request under proposed § 747.2006(f) that remains pending 60 days following receipt by the NCUA Board is deemed granted.

2006(g) Ombudsman

Proposed § 747.2006(g) would permit credit unions to request in writing the recommendation of NCUA's ombudsman to modify or to not issue a proposed IMCR under § 747.2006(b), or to modify or rescind an existing directive due to changed circumstances under § 747.2006(f). However, the proposed rule would provide that a credit union that fails to request the ombudsman's recommendation in a response under § 747.2006(c), or in a request under § 747.2006(f), shall be deemed to have waived the opportunity to do so. Finally, the proposed rule would require the ombudsman to promptly notify the credit union and the NCUA Board of his or her recommendation.

D. Other Conforming Changes to the Regulations

In addition to the amendments discussed above, the proposed rule would make minor conforming amendments to §§ 700.2, 701.21, 701.23, 701.34, 703.14, 713.6, 723.7, 747.2001, 747.2002, and 747.2003. The conforming amendments would primarily involve updating terminology and cross citations to proposed part 702 and proposed § 747.2006. No substantive changes are intended by these amendments.

III. Effective Date

How much time would credit unions have to implement these new requirements?

The proposed amendments would go into effect approximately 18 months after the publication of a final rule in the **Federal Register**. This would give credit unions lead time to plan for the new risk-based capital ratio requirements and other proposed changes to part 702. During the 18 month implementation period, credit unions would be required to continue to comply with current part 702. The Board believes this implementation period is necessary to allow credit unions to make adjustments to internal systems, balance sheets and operations well in advance of the effective date.

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [74] requires NCUA to provide an initial regulatory flexibility analysis with a proposed rule to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposed of the RFA to include credit unions with assets less than or equal to $50 million) and publish its certification and a short explanatory statement in the **Federal Register** also with the proposed rule.[75] The proposed amendments to part 702 will primarily impact only credit unions with more than $50 million in total assets. NCUA recognizes that there may, however, be some burden associated with the amendments to the current rule relating to additional data that will need to be collected on the Call Report; the elimination of the regular reserve requirement; and changes to the payment of dividends. In particular, implementation of the proposed rule will likely impose some one-time costs associated with personnel training and updates to

[74] 5 U.S.C. 601 *et seq.*

[75] 78 FR 4032 (Jan. 18, 2013).

systems for calculating regulatory capital. NCUA believes these one-time implementation costs will not constitute a significant economic impact on small credit unions. Accordingly, the NCUA Board certifies the proposed rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden.[76] For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping requirement, both referred to as information collections. The proposed changes to part 702 impose new information collection requirements. As required by the PRA, NCUA is submitting a copy of this proposal to OMB for its review and approval. Persons interested in submitting comments with respect to the information collection aspects of the proposed rule should submit them to OMB at the address noted below.

NCUA has determined that the proposed changes to part 702 will have some one-time costs associated with updating internal policies, and updating data collection and reporting systems for preparing Call Reports. NCUA estimates that all 6,681 credit unions will have to amend their procedures and systems for preparing Call Reports. However, a separate notice will be published for comment on the regulatory reporting requirements.

In addition, NCUA estimates that approximately 2,606 federally insured natural person credit unions hold asset-backed investments and would be subject to the proposed due diligence requirements. Credit unions are already required to perform due diligence under §§ 703.6, 703.10, and 703.12 of NCUA's regulations. Therefore, NCUA does not believe there will be any new burden associated with this requirement.

Finally, NCUA estimates that approximately 33.5 percent, or 2,237 credit unions, will be defined as ''complex'' under the proposed rule and will have new data collection requirements related to the new risk-based capital requirements.

Title of Information Collection: Risk-based Capital Ratio data.

Frequency of Response: On occasion and quarterly.

Affected Public: All credit unions.

Estimated Number of Respondents: 6,681.

Estimated Burden per Respondent: One-time recordkeeping, 122 hours; ongoing recordkeeping, 20 hours; one time policy review and revision, 20 hours.

Title of Information Collection: Risk-Based Capital Ratio policy implications for complex credit unions.

Affected Public: Complex Credit Unions.

Estimated Number of Respondents: 2,237.

Estimated Burden per Respondent: One-time policy review and revision, 40 hours.

Total Estimated Annual Burden: One-time recordkeeping and disclosures, (122 hours * non-complex credit unions, or 162 hours * complex credit unions); ongoing recordkeeping and disclosures (20 hours * all credit unions).

Submission of comments. NCUA considers comments by the public on this proposed collection of information in:

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

The PRA requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to NCUA on the substantive aspects of the proposed regulation.

Comments on the proposed information collection requirements should be sent to:

Office of Information and Regulatory Affairs, OMB, Attn: Shagufta Ahmed, Room 10226, New Executive Office Building, Washington, DC 20503, with a copy to the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This proposed rule will apply to all federally insured natural person credit unions, including federally insured, state-chartered natural person credit unions. Accordingly, it may have a 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. This impact is an unavoidable consequence of carrying out the statutory mandate to adopt a system of PCA to apply to all federally insured, natural person credit unions. Throughout the rulemaking process, NCUA has consulted with representatives of state regulators regarding the impact of PCA on state-chartered credit unions. The comments and suggestions of those state regulators are reflected in the proposed rule.

Assessment of Federal Regulations and Policies on Families

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

List of Subjects

12 CFR Part 700

Credit unions.

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.

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 713

Bonds, Credit unions, Insurance.

[76] 44 U.S.C. 3507(d); 5 CFR part 1320.

12 CFR Part 723

Credit unions, Loan programs—business, Reporting and recordkeeping requirements.

12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Crime, Equal access to justice, Investigations, Lawyers, Penalties.

By the National Credit Union Administration Board on January 23, 2014.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, NCUA Board proposes to amend 12 CFR parts 700, 701, 702, 703, 713, 723, and 747 as follows:

PART 700—DEFINITIONS

■ 1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

§ 700.2 [Amended]

■ 2. Amend the definition of ''net worth'' in § 700.2 by removing ''§ 702.2(f)'' and adding in its place ''§ 702.2''.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 3. 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. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.21 [Amended]

■ 4. Amend § 701.21(h)(4)(iv) by removing ''§ 702.2(f)'' and adding in its place ''§ 702.2''.

§ 701.23 [Amended]

■ 5. Amend § 701.23(b)(2) by removing the words ''net worth'' and adding in their place the word ''capital'', and removing the words ''or, if subject to a risk-based net worth (RBNW) requirement under Part 702 of this chapter, has remained 'well capitalized' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement''.

§ 701.34 [Amended]

■ 6. Amend § 701.34 as follows:

■ a. In paragraph (b)(12) by remove the words ''§§ 702.204(b)(11), 702.304(b) and 702.305(b)'' and add in their place the words ''part 702''.

b. In paragraph (d)(1)(i) remove the words ''net worth'' and add in their place the word ''capital''.

Appendix to § 701.34 [Amended]

■ 7. In the appendix to § 701.34, amend the paragraph beginning ''8. Prompt Corrective Action'' by removing the words ''net worth classifications (*see* 12 CFR 702.204(b)(11), 702.304(b) and 702.305(b), as the case may be)'' and adding in their place the words ''capital classifications (*see* 12 CFR part 702)''.

■ 8. Revise part 702 to read as follows:

PART 702—CAPITAL ADEQUACY

Sec.
702.1 Authority, purpose, scope, and other supervisory authority.
702.2 Definitions.

Subpart A—Prompt Corrective Action

702.101 Capital measures, effective date of classification, and notice to NCUA.
702.102 Capital category classification.
702.103 Applicability of risk-based capital ratio measure.
702.104 Risk-based capital ratio measure.
702.105 Individual minimum capital requirements.
702.106 Prompt corrective action for adequately capitalized credit unions.
702.107 Prompt corrective action for undercapitalized credit unions.
702.108 Prompt corrective action for significantly undercapitalized credit unions.
702.109 Prompt corrective action for critically undercapitalized credit unions.
702.110 Consultation with state officials on proposed prompt corrective action.
702.111 Net worth restoration plans (NWRP).
702.112 Reserves.
702.113 Full and fair disclosure of financial condition.
702.114 Payment of dividends.

Subpart B—Alternative Prompt Corrective Action for New Credit Unions

702.201 Scope and definition.
702.202 Net worth categories for new credit unions.
702.203 Prompt corrective action for adequately capitalized new credit unions.
702.204 Prompt corrective action for moderately capitalized, marginally capitalized, or minimally capitalized new credit unions.
702.205 Prompt corrective action for uncapitalized new credit unions.
702.206 Revised business plans (RBP) for new credit unions.
702.207 Incentives for new credit unions.
702.209 Reserves.
702.210 Full and fair disclosure of financial condition.
702.211 Payment of dividends.

Authority: 12 U.S.C. 1766(a), 1790d.

§ 702.1 Authority, purpose, scope, and other supervisory authority.

(a) *Authority.* Subparts A and B of this part and subpart L of part 747 of this chapter are issued by the National Credit Union Administration (NCUA) pursuant to sections 120 and 216 of the Federal Credit Union Act (FCUA), 12 U.S.C. 1776 and 1790d (section 1790d), as revised by section 301 of the Credit Union Membership Access Act, Public Law 105–219, 112 Stat. 913 (1998).

(b) *Purpose.* The express purpose of prompt corrective action under section 1790d is to resolve the problems of federally insured credit unions at the least possible long-term loss to the National Credit Union Share Insurance Fund. Subparts A and B of this part carry out the purpose of prompt corrective action by establishing a framework of minimum capital requirements, mandatory, and discretionary supervisory actions applicable according to a credit union's net worth classification, designed primarily to restore and improve the capital adequacy of federally insured credit unions.

(c) *Scope.* This part implements the provisions of section 1790d as they apply to federally insured credit unions, whether federally- or state-chartered; to such credit unions defined as ''new'' pursuant to section 1790d(b)(2); and to such credit unions defined as ''complex'' pursuant to section 1790d(d). Certain of these provisions also apply to officers and directors of federally insured credit unions. This part does not apply to corporate credit unions. Procedures for issuing, reviewing and enforcing orders and directives issued under this part are set forth in subpart L of part 747 of this chapter.

(d) *Other supervisory authority.* Neither section 1790d nor this part in any way limits the authority of the NCUA Board or appropriate state official under any other provision of law to take additional supervisory actions to address unsafe or unsound practices or conditions, or violations of applicable law or regulations. Action taken under this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the NCUA Board or appropriate state official, including issuance of cease and desist orders, orders of prohibition, suspension and removal, or assessment of civil money penalties, or any other actions authorized by law.

§ 702.2 Definitions.

Unless provided otherwise in this part, the terms used in this part have the same meanings as set forth in FCUA

sections 101 and 216, 12 U.S.C. 1752, 1790d. The following definitions apply to this part:

Allowance for loan and lease loss (ALLL) means reserves that have been established through charges against earnings to absorb future losses on loans, lease financing receivables, or other extensions of credit.

Appropriate regional director means the director of the NCUA regional office having jurisdiction over federally insured credit unions in the state where the affected credit union is principally located or, for credit unions with $10 billion or more in assets, the Director of the Office of National Examinations and Supervision.

Appropriate state official means the commission, board or other supervisory authority having jurisdiction over credit unions chartered by the state which chartered the affected credit union.

Call Report means the Call Report required to be filed by all credit unions under § 741.6(a)(2) of this chapter.

Capital means the equity, as measured by GAAP, available to a credit union to cover losses.

Cash equivalents mean short-term highly liquid investments that:

(1) Have original maturities of 3 months or less, at the time of purchase;

(2) Are readily convertible to known amounts of cash; and

(3) Are used as part of the credit union's cash-management activities.

Commitment means any legally binding arrangement that obligated the credit union to extend credit or to purchase assets.

Credit union means a federally insured, natural person credit union, whether federally- or state-chartered, as defined by 12 U.S.C. 1752(6).

CUSO means a credit union service organization as defined in part 712 and 741 of this chapter.

Delinquent loans means loans that are 60 days or more past due and loans placed on nonaccrual status.

Derivatives contract means, in general, a financial instrument, traded on or off an exchange, the value of which is directly depended upon the value on or more underlying securities, equity indices, debt instruments, commodities, interest rates other derivative instruments, or any agreed upon pricing index or arrangement. Derivatives contracts include interest rate derivatives contracts and any other instrument that poses similar counterparty credit risks. Derivatives contracts also include unsettled securities with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.

First mortgage real estate loan means loans and lines of credit fully secured by first liens on real estate (excluding MBLs), where:

(1) The original amortization of the mortgage exposure does not exceed 30 years,

(2) The loan underwriting took into account all the borrower's obligations, including mortgage obligations, principal, interest, taxes, insurance (including mortgage guarantee insurance) and assessments, and

(3) The loan underwriting concluded the borrower is able to repay the exposure using the maximum interest rate that may apply in the first five years, the maximum contract exposure over the life of the mortgage, and verified income.

GAAP means generally accepted accounting principles as used in the United States.

Goodwill means an intangible asset representing the future economic benefits arising from other assets acquired in a business combination (e.g., merger) that are not individually identified and separately recognized.

Intangible assets means those assets that are required to be reported as intangible assets in a credit union's Call Report, including but not limited to purchased credit card relationships, goodwill, favorable leaseholds, and core deposit value.

Investment in CUSO means the unimpaired value of the credit union's aggregate CUSO investments as measured under GAAP on an unconsolidated basis.

Identified losses means those items that have been determined by an evaluation made by a state or federal examiner, as measured on the date of examination, to be chargeable against income, capital and/or valuation allowances such as the allowance for loan and lease losses. Examples of identified losses would be assets classified as losses, off-balance sheet items classified as losses, any provision expenses that are necessary to replenish valuation allowances to an adequate level, liabilities not shown on the books, estimated losses in contingent liabilities, and differences in accounts that represent shortages.

Loans to CUSOs means the aggregate outstanding loan balance, available line(s) of credit from the credit union, and guarantees the credit union has made to or on behalf of a CUSO.

Loans transferred with limited recourse means the total principal balance outstanding of loans transferred, including participations, for which the transfer qualified for true sale accounting treatment under GAAP, and for which the transferor credit union retained some limited recourse (i.e. insufficient recourse to preclude true sale accounting treatment). The term does not include transfers that qualify for true sale accounting treatment but contain only routine representation and warranty paragraphs that are standard for sales on the secondary market provided the credit union is in compliance with all other related requirements such as capital requirements.

Mortgage servicing asset (MSA) means those assets (net of any related valuation allowances) resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.

NCUSIF means the National Credit Union Share Insurance Fund as defined by 12 U.S.C. 1783.

Net worth means:

(1) The retained earnings balance of the credit union at quarter-end as determined under GAAP, subject to paragraph (3) of this definition. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities.

(2) For a low income-designated credit union, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the NCUSIF.

(3) For a credit union that acquires another credit union in a mutual combination, net worth also includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero. The acquired retained earnings must be determined at the point of acquisition under generally accepted accounting principles. A mutual combination is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.

(4) The term ''net worth'' also includes loans to and accounts in an insured credit union, established pursuant to section 208 of the Act [12 U.S.C. 1788], provided such loans and accounts:

(i) Have a remaining maturity of more than 5 years;

(ii) Are subordinate to all other claims including those of shareholders, creditors, and the NCUSIF;

(iii) Are not pledged as security on a loan to, or other obligation of, any party;

(iv) Are not insured by the NCUSIF;

(v) Have non-cumulative dividends;

(vi) Are transferable; and

(vii) Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.

Net worth ratio means the ratio of the net worth of the credit union to the total assets of the credit union rounded to two decimal places.

New credit union means a federally insured credit union which both has been in operation for less than ten (10) years and has $10,000,000 or less in total assets.

Off-balance sheet items means items such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements that are not included on the balance sheet but are normally reported in the financial statement footnotes.

Qualifying master netting agreement means a written, legally enforceable agreement, provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the credit union the right to accelerate, terminate, and close out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or under any similar insolvency law applicable to GSEs;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this part, a credit union must conduct sufficient legal review, at origination and in response to any changes in applicable law, to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of this definition of qualifying master netting agreement; and

(ii) In the event of a legal challenge (including one resulting from default or from conservatorship, receivership, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of relevant jurisdictions.

Risk-based capital ratio means the percentage, rounded to two decimal places, of the risk-based capital numerator to total risk-weighted assets, as calculated in accordance with § 702.104(a).

Risk-weighted assets means the total risk-weighted assets as calculated in accordance with § 702.104(c).

Senior executive officer means a senior executive officer as defined by § 701.14(b)(2) of this chapter.

Shares means deposits, shares, share certificates, share drafts, or any other depository account authorized by federal or state law.

Total assets. (1) For each quarter, a credit union must elect one of the measures of total assets listed in paragraph (2) of this definition to apply for all purposes under this part except §§ 702.103 through 702.105 (risk-based capital ratio requirements).

(2) Total assets means a credit union's total assets as measured by either—

(i) *Average quarterly balance.* The credit union's total assets measured by the average of quarter-end balances of the current and three preceding calendar quarters;

(ii) *Average monthly balance.* The credit union's total assets measured by the average of month-end balances over the three calendar months of the applicable calendar quarter;

(iii) *Average daily balance.* The credit union's total assets measured by the average daily balance over the applicable calendar quarter; or

(iv) *Quarter-end balance.* The credit union's total assets measured by the quarter-end balance of the applicable calendar quarter as reported on the credit union's Call Report.

U.S. Government agency means an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

Verified income means receipt and retention of corroborative information to establish the reality of the income supporting the repayment of the loan.

Weighted-average life of investments means:

(1) For investments in registered investment companies (e.g., mutual funds) and collective investment funds (e.g., common trusts), the maximum weighted-average life or duration target of the investment disclosed, directly or indirectly, in the most recent prospectus or trust instrument (if the maximum weighted-average life or duration target is not disclosed, the weighted-average life of investments means greater than 5 years, but less than 10 years);

(2) For investments in money market funds, as defined in 17 CFR 270.2a–7, and collective investment funds operated in accordance with short-term investment fund rules set forth in 12 CFR 9.18(b)(4)(ii)(B)(*1*) through (*3*), 1 year or less;

(3) For fixed rate debt obligations and deposits that are callable in whole, the period remaining to the maturity date;

(4) For fixed rate debt obligations and deposits that are non-callable and non-amortizing (e.g., bullet maturity instruments), the period remaining to the maturity date;

(5) For fixed rate debt obligations or deposits with periodic principal pay downs (e.g., mortgage-backed securities), the weighted-average life of investments as defined according to industry standard calculations, which include the impact of unscheduled payments;

(6) For variable rate debt obligations and deposits (regardless of whether the investment amortizes), the period remaining to the next rate adjustment date;

(7) For capital stock in mixed-ownership Government corporations, as defined in 31 U.S.C. 9101(2), greater than 1 year but less than or equal to 3 years;

(8) For other equity securities, greater than 10 years.

(9) For any other investments not addressed above, the average time to the return of a dollar of principal, calculated by multiplying each portion of principal received by the time it is expected to be received (based on a reasonable and supportable estimate of that time), and then taking the total of these time-weighted payments and dividing by the total amount of principal.

Subpart A—Prompt Corrective Action

§ 702.101 Capital measures, effective date of classification, and notice to NCUA.

(a) *Capital measure.* For purposes of this part, a credit union must determine its capital classification at the end of each calendar quarter using the following measures:

(1) The net worth ratio; and

(2) If determined to be applicable under § 702.103, the risk-based capital ratio.

(b) *Effective date of capital classification.* For purposes of this part, the effective date of a federally insured credit union's capital classification shall be the most recent to occur of:

(1) *Quarter-end effective date.* The last day of the calendar month following the end of the calendar quarter; or

(2) *Corrected capital classification.* The date the credit union received subsequent written notice from NCUA or, if state-chartered, from the appropriate state official, of a decline in capital classification due to correction of an error or misstatement in the credit union's most recent Call Report; or

(3) *Reclassification to lower category.* The date the credit union received written notice from NCUA or, if state-chartered, the appropriate state official, of reclassification on safety and soundness grounds as provided under §§ 702.102(b) or 702. 202(d).

(c) *Notice to NCUA by filing Call Report.* (1) Other than by filing a Call Report, a federally insured credit union need not notify the NCUA Board of a change in its capital measures that places the credit union in a lower capital category;

(2) Failure to timely file a Call Report as required under this section in no way alters the effective date of a change in capital classification under paragraph (b) of this section, or the affected credit union's corresponding legal obligations under this part.

§ 702.102 Capital classifications.

(a) *Capital categories.* Except for credit unions defined as ''new'' under subpart B of this part, a credit union shall be deemed to be classified (Table 1 of this section)—

(1) *Well capitalized* if:

(i) *Net worth ratio.* The credit union has a net worth ratio of 7.0 percent or greater; and

(ii) *Risk-based capital ratio.* The credit union, if complex, has a total risk-based capital ratio of 10.5 percent or greater.

(2) *Adequately capitalized* if:

(i) *Net worth ratio.* The credit union has a net worth ratio of 6.0 percent or greater; and

(ii) *Risk-based capital ratio.* The credit union, if complex, has a total risk-based capital ratio of 8.0 percent or greater.

(3) *Undercapitalized* if:

(i) *Net worth ratio.* The credit union has a net worth ratio of 4.0 percent or greater; and

(ii) *Risk-based capital ratio.* The credit union, if complex, fails to meet the minimum 8.0 percent total risk based capital requirement.

(4) *Significantly undercapitalized* if:

(i) The credit union meets the definition of undercapitalized, has a net worth ratio of less than 5.0 percent, and has received notice that its net worth restoration plan has not been approved (to qualify for a higher net worth classification, a significantly undercapitalized credit union must have a net worth restoration plan approved by NCUA);

(ii) The credit union has a net worth ratio of 2.0 percent or more but less than 4.0 percent; or

(iii) The credit union has a net worth ratio of 4.0 percent or more but less than 5.0 percent, and either—

(A) Fails to submit an acceptable net worth restoration plan within the time prescribed in § 702.111; or

(B) Materially fails to implement a net worth restoration plan approved by the NCUA Board.

(5) *Critically undercapitalized* if it has a net worth ratio of less than 2.0 percent.

TABLE 1 TO § 702.102—CAPITAL CATEGORIES

A credit union's capital classification is . . .	Net worth ratio	Risk-based capital ratio	And subject to following condition(s) . . .
Well Capitalized	7% or above	10.5% or above	Must pass both net worth ratio and risk-based capital ratio.
Adequately Capitalized	6% to 6.99%	8% to 10.49%	Must pass both net worth ratio and risk-based capital ratio.
Undercapitalized	4% to 5.99%	Less than 8%	Must pass both net worth ratio and risk-based capital ratio.
Significantly Undercapitalized.	2% to 3.99%	N/A	Or if ''undercapitalized at < 5% net worth and fails to timely submit or materially implement an approved net worth restoration plan.
Critically Undercapitalized	Less than 2%	N/A	None.

(b) *Reclassification based on supervisory criteria other than net worth.* The NCUA Board may reclassify a well capitalized credit union as adequately capitalized and may require an adequately capitalized or undercapitalized credit union to comply with certain mandatory or discretionary supervisory actions as if it were classified in the next lower capital category (each of such actions hereinafter referred to generally as ''reclassification'') in the following circumstances:

(1) *Unsafe or unsound condition.* The NCUA Board has determined, after notice and opportunity for hearing pursuant to § 747.2003 of this chapter, that the credit union is in an unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The NCUA Board has determined, after notice and opportunity for hearing pursuant to § 747.2003 of this chapter, that the credit union has not corrected a material unsafe or unsound practice of which it was, or should have been, aware.

(c) *Non-delegation.* The NCUA Board may not delegate its authority to reclassify a credit union under paragraph (b) of this section.

(d) *Consultation with state officials.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before reclassifying a federally insured state-chartered credit union under paragraph (b) of this section, and shall promptly notify the appropriate state official of its decision to reclassify.

§ 702.103 Applicability of risk-based capital ratio measure.

For purposes of § 702.102, a credit union is defined as ''complex'' and a risk-based capital ratio requirement is applicable only if the credit union's quarter-end total assets exceed fifty million dollars ($50,000,000), as reflected in its most recent Call Report.

§ 702.104 Risk-based capital ratio measures.

A complex credit union must calculate its risk-based capital ratio in accordance with this section.

(a) *Calculation of the risk-based capital ratio.* To determine its risk-based capital ratio a complex credit union must calculate the percentage, rounded to two decimal places, of its risk-based capital numerator as described in paragraph (b) of this section to its total risk-weighted assets as described in paragraph (c) of this section.

(b) *Risk-based capital ratio numerator.* The risk-based capital ratio numerator is the sum of the specific capital elements in paragraph (b)(1) of this section, minus the regulatory adjustments in paragraph (b)(2) of this section.

(1) *Capital elements of the risk-based capital ratio numerator.* The capital elements of the risk-based capital numerator are:

(i) Undivided earnings (including any regular reserve);

(ii) Appropriation for non-conforming investments;

(iii) Other reserves;

(iv) Equity acquired in merger;

(v) Net income;

(vi) ALLL, limited to 1.25% of risk assets;

(vii) Secondary capital accounts included in net worth (as defined in § 702.2); and

(viii) Section 208 assistance included in net worth (as defined in § 702.2).

(2) *Risk-based capital numerator deductions.* The elements deducted from the sum of the risk-based capital elements are:

(i) NCUSIF Capitalization Deposit;

(ii) Goodwill;

(iii) Other intangible assets; and

(iv) Identified losses not reflected in the risk-based capital ratio numerator.

(c) *Total risk-weighted assets.* (1) *General.* Total risk-weighted assets includes risk-weighted on-balance sheet assets as described in paragraph (c)(2) of this section, plus the risk-weighted off-balance sheet assets in paragraph (c)(3) of this section, plus the risk-weighted derivatives in paragraph (c)(4) of this section, less the risk-based capital numerator deductions in paragraph (b)(2) of this section.

(2) *Risk-weights for on-balance sheet assets.* The risk categories and weights for assets listed on a complex credit union's balance sheet are as follows:

(i) *Category 1—zero percent risk-weight.* A credit union must assign a zero percent risk-weight to:

(A) Cash on hand, which includes the change fund (coin, currency, and cash items), vault cash, vault funds in transit and currency supplied from automatic teller machines.

(B) NCUSIF capital deposit.

(C) Debt instruments unconditionally guaranteed by the NCUA or the Federal Deposit Insurance Corporation.

(D) U.S. Government obligations directly and unconditionally guaranteed by the full faith and credit of the U.S. Government, including U.S. Treasury bills, notes, bonds, zero coupon bonds, and separate trading of registered interest and principal securities (STRIPS).

(E) Non-delinquent student loans unconditionally guaranteed by a U.S. Government agency.

(ii) *Category 2—20 percent risk-weight.* A credit union must assign a 20 percent risk-weight to:

(A) Cash on deposit, which includes balances on deposit in insured financial institutions and deposits in transit. These amounts may or may not be subject to withdrawal by check, and they may or may not bear interest. Examples include overnight accounts, corporate credit union daily accounts, money market accounts, and checking accounts.

(B) Cash equivalents (investments with original maturities of three months or less). Cash equivalents are short-term, highly liquid non-security investments that have an original maturity of 3 months or less at the time of purchase, are readily convertible to known amounts of cash, and are used as part of the credit union's cash management activities.

(C) The total amount of investments with a weighted-average life of one year or less.

(D) Residential mortgages guaranteed by the U.S. Government through the Federal Housing Administration or the Department of Veterans Affairs.

(E) Loans guaranteed 75 percent or more by the Small Business Administration, U.S. Department of Agriculture, or other U.S. Government agency.

(iii) *Category 3—50 percent risk-weight.* A credit union must assign a 50 percent risk-weight to:

(A) The total amount of investments with a weighted-average life of greater than one year, but less than or equal to three years.

(B) The total amount of current and non-delinquent first mortgage real estate loans less than or equal to 25 percent of total assets.

(iv) *Category 4—75 percent risk-weight.* A credit union must assign a 75 percent risk-weight to:

(A) The total amount of investments with a weighted-average life of greater than three years, but less than or equal to five years.

(B) Current and non-delinquent unsecured credit card loans, other unsecured loans and lines of credit, short-term, small amount loans (STS), new vehicle loans, used vehicle loans, leases receivable and all other loans. (Excluding loans reported as member business loans).

(C) Current and non-delinquent first mortgage real estate loans greater than 25 percent of total assets and less than or equal to 35 percent of assets.

(v) *Category 5—100 percent risk-weight.* A credit union must assign a 100 percent risk-weight to:

(A) Corporate credit union nonperpetual capital.

(B) The total outstanding principal amount of loans to CUSOs.

(C) Current and non-delinquent first mortgage real estate loans greater than 35 percent of total assets.

(D) Delinquent first mortgage real estate loans.

(E) Other real estate-secured loans less than or equal to 10 percent of assets.

(F) Member business loans less than or equal to 15 percent of assets.

(G) Loans held for sale.

(H) The total amount of any foreclosures and repossessed assets.

(I) Land and building, less depreciation on building.

(J) Any other fixed assets, such as furniture and fixtures and leasehold improvements, less related depreciation.

(K) Current non-federally insured student loans.

(L) All other assets not specifically assigned a risk-weight but included in the balance sheet.

(vi) *Category 6—125 percent risk-weight.* A credit union must assign a 125 percent risk-weight to the total amount of all other real estate-secured loans greater than 10 percent of assets and less than or equal to 20 percent of assets.

(vii) *Category 7—150 percent risk-weight.* A credit union must assign a 150 percent risk-weight to:

(A) The total amount of investments with a weighted-average life of greater than five years, but less than or equal to ten years.

(B) Any delinquent unsecured credit card loans; other unsecured loans and lines of credit; short-term, small amount loans; non-federally guaranteed student

loans; new vehicle loans; used vehicle loans; leases receivable; and all other loans (excluding loans reported as member business loans).

(C) The total amount of all other real estate-secured loans greater than 20 percent of assets.

(D) Any member business loans greater than 15 percent of assets and less than or equal to 25 percent of assets.

(viii) *Category 8—200 percent risk-weight.* A credit union must assign a 200 percent risk-weight to:

(A) Corporate credit union perpetual capital.

(B) The total amount of investments with a weighted-average life of greater than 10 years.

(C) The total amount of member business loans greater than 25 percent of assets, other than member business loans included in Category 3 (paragraph (c)(2)(iii) of this section).

(ix) *Category 9—250 percent risk-weight.* A credit union must assign a 250 percent risk-weight to:

(A) The total value of investments in CUSOs.

(B) The total value of mortgage servicing assets.

(x) *Category 10—1,250 percent risk-weight.* A credit union must assign a 1,250 percent risk-weight (8% * 1,250% = 100%) to an asset-backed investment for which the credit union is unable to demonstrate, as required under paragraph (d) of this section, a comprehensive understanding of the features of the asset-backed investment that would materially affect its performance.

(3) *Risk-weights for off-balance sheet activities.* The risk-weighted amounts for all off-balance sheet items are determined by multiplying the notional principal, or face value, by the appropriate conversion factor and the assigned risk-weight as follows:

(i) A 75 percent conversion factor with a 100 percent risk-weight for unfunded commitments for member business loans.

(ii) A 75 percent conversion factor with a 100 percent risk-weight for member business loans transferred with limited recourse.

(iii) A 75 percent conversion factor with a 50 percent risk-weight for first mortgage real estate loans transferred with limited recourse.

(iv) A 75 percent conversion factor with a 100 percent risk-weight for other real estate loans transferred with limited recourse.

(v) A 75 percent conversion factor with a 100 percent risk-weight for non-federally guaranteed student loans transferred with limited recourse.

(vi) A 75 percent conversion factor with a 75 percent risk-weight for all other loans transferred with limited recourse.

(vii) A 10 percent conversion factor with a 75 percent risk-weight for total unfunded commitments for non-business loans.

(4) *Derivatives.* (i) *Single derivatives contract exposure amount.* Except as modified by paragraph (c)(4)(iii) of this section, the exposure amount for a single derivatives contract that is not subject to a qualifying master netting agreement is equal to the sum of the credit union's current credit exposure and potential future credit exposure (PFE) on the derivatives contract.

(A) *Current credit exposure.* The current credit exposure for a single derivatives contract is the greater of the mark-to-fair value of the derivatives contract or zero.

(B) *Potential future credit exposure (PFE).* (*1*) The PFE for a single derivatives contract, including a derivatives contract with a negative mark-to-fair value, is calculated by multiplying the notional principal amount of the derivatives contract by the appropriate conversion factor in Table 1 of this section.

(*2*) For a derivatives contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity equals the time until the next reset date.

(*3*) For an interest rate derivatives contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

TABLE 1 TO § 702.104—CONVERSION FACTOR MATRIX FOR DERIVATIVES CONTRACTS

Remaining maturity	Interest rate	Other
One year or less	0.00	0.10
Greater than one year and less than or equal to five years	0.005	0.12
Greater than five years	0.015	0.15

(ii) *Multiple derivatives contracts subject to a qualifying master netting agreement.* Except as modified by paragraph (c)(4)(iii) of this section, the exposure amount for multiple derivatives contracts subject to a qualifying master netting agreement is equal to the sum of the net current credit exposure and the adjusted sum of the PFE amounts for all derivatives contracts subject to the qualifying master netting agreement.

(A) *Net current credit exposure.* The net current credit exposure is the greater of the net sum of all positive and negative mark-to-fair values of the individual derivatives contracts subject to the qualifying master netting agreement or zero.

(B) *Adjusted sum of the PFE amounts.* The adjusted sum of the PFE amounts, Anet, is calculated as Anet = (0.4 × Agross) + (0.6 × NGR × Agross), where:

(*1*) Agross equals the gross PFE (that is, the sum of the PFE amounts as determined under paragraph (c)(4)(i)(B) of this section for each individual derivatives contract subject to the qualifying master netting agreement); and

(*2*) Net-to-gross Ratio (NGR) equals the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph(c)(4)(i)(A) of this section) of all individual derivatives contracts subject to the qualifying master netting agreement.

(iii) *Recognition of credit risk mitigation of collateralized derivatives contracts.* A credit union may recognize the credit risk mitigation benefits of financial collateral that secures a derivatives contract or multiple derivatives contracts subject to a qualifying master netting agreement (netting set) by using the simple approach in paragraph (c)(4)(v) of this section.

(iv) *Alternative approach.* As an alternative to the simple approach, a credit union may recognize the credit risk mitigation benefits of financial collateral that secures such a contract or netting set if the financial collateral is marked-to-fair value on a daily basis and subject to a daily margin maintenance requirement by applying a risk-weight to the exposure as if it were

uncollateralized and adjusting the exposure amount calculated under paragraph (c)(4)(i) of this section using the collateral approach in paragraph (c)(4)(v) of this section. The credit union must substitute the exposure amount calculated under paragraph (c)(4)(i)(A) or (B) of this section for exposure amount in the equation in paragraph (c)(4)(v).

(v) *Collateralized transactions.* (A) *General.* A credit union may use the approach in paragraph (c)(4)(v)(B) of this section to recognize the risk-mitigating effects of financial collateral.

(B) *Simple collateralized derivatives approach.* To qualify for the simple approach, the financial collateral must meet the following requirements:

(*1*) The collateral must be subject to a collateral agreement for at least the life of the exposure;

(*2*) The collateral must be revalued at least every six months; and

(*3*) The collateral and the exposure must be denominated in the same currency.

(C) *Risk-weight substitution.* (*1*) A credit union may apply a risk-weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements for the simple collateralized approach of this section) based on the risk-weight assigned to the collateral as established under § 702.104(c).

(*2*) A credit union must apply a risk-weight to the unsecured portion of the exposure based on the risk-weight applicable to the exposure under this subpart.

(D) *Exceptions to the 20 percent risk-weight floor and other requirements.* Notwithstanding the simple collateralized derivatives approach in paragraph (c)(4)(v)(B) of this section:

(*1*) A credit union may assign a zero percent risk-weight to an exposure to a derivatives contract that is marked-to-market on a daily basis and subject to a daily margin maintenance requirement, to the extent the contract is collateralized by cash on deposit.

(*2*) A credit union may assign a 10 percent risk-weight to an exposure to an derivatives contract that is marked-to-market daily and subject to a daily margin maintenance requirement, to the extent that the contract is collateralized by an exposure that qualifies for a zero percent risk-weight under § 702.104(c)(2)(ii).

(E) A credit union may assign a zero percent risk-weight to the collateralized portion of an exposure where:

(*1*) The financial collateral is cash on deposit; or

(*2*) The financial collateral is an exposure that qualifies for a zero percent risk-weight under § 702.104(c)(2)(ii), and the credit union has discounted the fair value of the collateral by 20 percent.

(d) *Due diligence requirements for asset-backed investments.* (1) If a credit union is unable to demonstrate to the NCUA a comprehensive understanding of the features of an asset-backed investment exposure that would materially affect the performance of the exposure, the credit union must assign a 1,250 percent risk-weight to the asset-backed investment exposure. The credit union's analysis must be commensurate with the complexity of the asset-backed investment and the materiality of the position in relation to regulatory capital according to this part.

(2) A credit union must demonstrate its comprehensive understanding of an asset-backed investment exposure under paragraph (d)(1) of this section, for each asset-backed investment exposure by:

(i) Conducting an analysis of the risk characteristics of an investment exposure prior to acquiring the exposure and documenting such analysis within three business days after acquiring the exposure, considering:

(A) Structural features of the investment that would materially impact the performance of the exposure, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, fair value triggers, the performance of organizations that service the position, and deal-specific definitions of default;

(B) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average loan-to-value ratio; and industry and geographic diversification data on the underlying exposure(s);

(C) Relevant market data of the asset-backed investment, for example, bid-ask spreads, most recent sales price and historical price volatility, trading volume, implied market rating, and size, depth, and concentration level of the market for the investment; and

(D) For reinvestment exposures, performance information on the underlying investment exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the investment exposures; and

(ii) On an ongoing basis (no less frequently than quarterly), evaluating, reviewing, and updating as appropriate the analysis required under this section for each investment exposure.

§ 702.105 Individual minimum capital requirements.

(a) *General.* The rules and procedures specified in this paragraph (a) apply to the establishment of an individual minimum capital requirement for a credit union that varies from any of the risk-based capital requirement(s) that would otherwise apply to the credit union under this part.

(b) *Appropriate considerations for establishing individual minimum capital requirements.* Minimum capital levels higher than the risk-based capital requirements under this part may be appropriate for individual credit unions. NCUA may establish increased individual minimum capital requirements upon its determination that the credit union's capital is or may become inadequate in view of the credit union's circumstances. For example, higher capital levels may be appropriate when NCUA determines that:

(1) A credit union is receiving special supervisory attention;

(2) A credit union has or is expected to have losses resulting in capital inadequacy;

(3) A credit union has a high degree of exposure to interest rate risk, prepayment risk, credit risk, concentration risk, certain risks arising from nontraditional activities or similar risks, or a high proportion of off-balance sheet risk;

(4) A credit union has poor liquidity or cash flow;

(5) A credit union is growing, either internally or through acquisitions, at such a rate that supervisory problems are presented that are not adequately addressed by other NCUA regulations or other guidance;

(6) A credit union may be adversely affected by the activities or condition of its CUSOs or other persons or entities with which it has significant business relationships, including concentrations of credit;

(7) A credit union with a portfolio reflecting weak credit quality or a significant likelihood of financial loss, or which has loans or securities in nonperforming status or on which borrowers fail to comply with repayment terms;

(8) A credit union has inadequate underwriting policies, standards, or procedures for its loans and investments;

(9) A credit union has failed to properly plan for, or execute, necessary retained earnings growth, or

(10) A credit union has a record of operational losses that exceeds the

average of other similarly situated credit unions; has management deficiencies, including failure to adequately monitor and control financial and operating risks, particularly the risks presented by concentrations of credit and nontraditional activities; or has a poor record of supervisory compliance.

(c) *Standards for determination of appropriate individual minimum capital requirements.* The appropriate minimum capital levels for an individual credit union cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based, in part, on subjective judgment grounded in agency expertise. The factors to be considered in NCUA's determination will vary in each case and may include, for example:

(1) The conditions or circumstances leading to the determination that a higher minimum capital requirement is appropriate or necessary for the credit union;

(2) The urgency of those circumstances or potential problems;

(3) The overall condition, management strength, and future prospects of the credit union and, if applicable, its subsidiaries, affiliates, and business partners;

(4) The credit union's liquidity, capital, and other indicators of financial stability, particularly as compared with those of similarly situated credit unions; and

(5) The policies and practices of the credit union's directors, officers, and senior management as well as the internal control and internal audit systems for implementation of such adopted policies and practices.

§ 702.106 Prompt corrective action for adequately capitalized credit unions.

(a) *Earnings retention.* Beginning on the effective date of classification as adequately capitalized or lower, a federally insured credit union must increase the dollar amount of its net worth quarterly either in the current quarter, or on average over the current and three preceding quarters, by an amount equivalent to at least 1/10th percent (0.1%) of its total assets (or more by choice), until it is well capitalized.

(b) *Decrease in retention.* Upon written application received no later than 14 days before the quarter end, the NCUA Board, on a case-by-case basis, may permit a credit union to increase the dollar amount of its net worth by an amount that is less than the amount required under paragraph (a) of this section, to the extent the NCUA Board determines that such lesser amount—

(1) Is necessary to avoid a significant redemption of shares; and

(2) Would further the purpose of this part.

(c) *Decrease by FISCU.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before permitting a federally insured state-chartered credit union to decrease its earnings retention under paragraph (b) of this section.

(d) *Periodic review.* A decision under paragraph (b) of this section to permit a credit union to decrease its earnings retention is subject to quarterly review and revocation except when the credit union is operating under an approved net worth restoration plan that provides for decreasing its earnings retention as provided under paragraph (b) of this section.

§ 702.107 Prompt corrective action for undercapitalized credit unions.

(a) *Mandatory supervisory actions by credit union.* A credit union which is undercapitalized must—

(1) *Earnings retention.* Increase net worth in accordance with § 702.106;

(2) *Submit net worth restoration plan.* Submit a net worth restoration plan pursuant to § 702.111, *provided however,* that a credit union in this category having a net worth ratio of less than five percent (5%) which fails to timely submit such a plan, or which materially fails to implement an approved plan, is classified significantly undercapitalized pursuant to § 702.102(a)(4)(ii);

(3) *Restrict increase in assets.* Beginning the effective date of classification as undercapitalized or lower, not permit the credit union's assets to increase beyond its total assets for the preceding quarter unless—

(i) *Plan approved.* The NCUA Board has approved a net worth restoration plan which provides for an increase in total assets and—

(A) The assets of the credit union are increasing consistent with the approved plan; and

(B) The credit union is implementing steps to increase the net worth ratio consistent with the approved plan;

(ii) *Plan not approved.* The NCUA Board has not approved a net worth restoration plan and total assets of the credit union are increasing because of increases since quarter-end in balances of:

(A) Total accounts receivable and accrued income on loans and investments; or

(B) Total cash and cash equivalents; or

(C) Total loans outstanding, not to exceed the sum of total assets plus the quarter-end balance of unused commitments to lend and unused lines of credit provided however that a credit union which increases a balance as permitted under paragraphs (a)(3)(ii)(A), (B) or (C) of this section cannot offer rates on shares in excess of prevailing rates on shares in its relevant market area, and cannot open new branches;

(4) *Restrict member business loans.* Beginning the effective date of classification as undercapitalized or lower, not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as of the preceding quarter-end unless it is granted an exception under 12 U.S.C. 1757a(b).

(b) *Second tier discretionary supervisory actions by NCUA.* Subject to the applicable procedures for issuing, reviewing and enforcing directives set forth in subpart L of part 747 of this chapter, the NCUA Board may, by directive, take one or more of the following actions with respect to an undercapitalized credit union having a net worth ratio of less than five percent (5%), or a director, officer or employee of such a credit union, if it determines that those actions are necessary to carry out the purpose of this part:

(1) *Requiring prior approval for acquisitions, branching, new lines of business.* Prohibit a credit union from, directly or indirectly, acquiring any interest in any business entity or financial institution, establishing or acquiring any additional branch office, or engaging in any new line of business, unless the NCUA Board has approved the credit union's net worth restoration plan, the credit union is implementing its plan, and the NCUA Board determines that the proposed action is consistent with and will further the objectives of that plan;

(2) *Restricting transactions with and ownership of CUSO.* Restrict the credit union's transactions with a CUSO, or require the credit union to reduce or divest its ownership interest in a CUSO;

(3) *Restricting dividends paid.* Restrict the dividend rates the credit union pays on shares to the prevailing rates paid on comparable accounts and maturities in the relevant market area, as determined by the NCUA Board, except that dividend rates already declared on shares acquired before imposing a restriction under this paragraph may not be retroactively restricted;

(4) *Prohibiting or reducing asset growth.* Prohibit any growth in the credit union's assets or in a category of assets, or require the credit union to reduce its assets or a category of assets;

(5) *Alter, reduce, or terminate activity.* Require the credit union or its CUSO to alter, reduce, or terminate any activity which poses excessive risk to the credit union;

(6) *Prohibiting nonmember deposits.* Prohibit the credit union from accepting all or certain nonmember deposits;

(7) *Dismissing director or senior executive officer.* Require the credit union to dismiss from office any director or senior executive officer, *provided however,* that a dismissal under this clause shall not be construed to be a formal administrative action for removal under 12 U.S.C. 1786(g);

(8) *Employing qualified senior executive officer.* Require the credit union to employ qualified senior executive officers (who, if the NCUA Board so specifies, shall be subject to its approval); and

(9) *Other action to carry out prompt corrective action.* Restrict or require such other action by the credit union as the NCUA Board determines will carry out the purpose of this part better than any of the actions prescribed in paragraphs (b)(1) through (8) of this section.

(c) *First tier application of discretionary supervisory actions.* An undercapitalized credit union having a net worth ratio of five percent (5%) or more, or which is classified undercapitalized by reason of failing to satisfy a risk-based net worth requirement under § 702.104, is subject to the discretionary supervisory actions in paragraph (b) of this section if it fails to comply with any mandatory supervisory action in paragraph (a) of this section or fails to timely implement an approved net worth restoration plan under § 702.111, including meeting its prescribed steps to increase its net worth ratio.

§ 702.108 Prompt corrective action for significantly undercapitalized credit unions.

(a) *Mandatory supervisory actions by credit union.* A credit union which is significantly undercapitalized must—

(1) *Earnings retention.* Increase net worth in accordance with § 702.106;

(2) *Submit net worth restoration plan.* Submit a net worth restoration plan pursuant to § 702.111;

(3) *Restrict increase in assets.* Not permit the credit union's total assets to increase except as provided in § 702.107(a)(3); and

(4) *Restrict member business loans.* Not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as provided in § 702.107(a)(4).

(b) *Discretionary supervisory actions by NCUA.* Subject to the applicable procedures for issuing, reviewing and enforcing directives set forth in subpart L of part 747 of this chapter, the NCUA Board may, by directive, take one or more of the following actions with respect to any significantly undercapitalized credit union, or a director, officer or employee of such credit union, if it determines that those actions are necessary to carry out the purpose of this part:

(1) *Requiring prior approval for acquisitions, branching, new lines of business.* Prohibit a credit union from, directly or indirectly, acquiring any interest in any business entity or financial institution, establishing or acquiring any additional branch office, or engaging in any new line of business, except as provided in § 702.107(b)(1);

(2) *Restricting transactions with and ownership of CUSO.* Restrict the credit union's transactions with a CUSO, or require the credit union to divest or reduce its ownership interest in a CUSO;

(3) *Restricting dividends paid.* Restrict the dividend rates that the credit union pays on shares as provided in § 702.107(b)(3);

(4) *Prohibiting or reducing asset growth.* Prohibit any growth in the credit union's assets or in a category of assets, or require the credit union to reduce assets or a category of assets;

(5) *Alter, reduce or terminate activity.* Require the credit union or its CUSO(s) to alter, reduce, or terminate any activity which poses excessive risk to the credit union;

(6) *Prohibiting nonmember deposits.* Prohibit the credit union from accepting all or certain nonmember deposits;

(7) *New election of directors.* Order a new election of the credit union's board of directors;

(8) *Dismissing director or senior executive officer.* Require the credit union to dismiss from office any director or senior executive officer, *provided however,* that a dismissal under this clause shall not be construed to be a formal administrative action for removal under 12 U.S.C. 1786(g);

(9) *Employing qualified senior executive officer.* Require the credit union to employ qualified senior executive officers (who, if the NCUA Board so specifies, shall be subject to its approval);

(10) *Restricting senior executive officers' compensation.* Except with the prior written approval of the NCUA Board, limit compensation to any senior executive officer to that officer's average rate of compensation (excluding bonuses and profit sharing) during the four (4) calendar quarters preceding the effective date of classification of the credit union as significantly undercapitalized, and prohibit payment of a bonus or profit share to such officer;

(11) *Other actions to carry out prompt corrective action.* Restrict or require such other action by the credit union as the NCUA Board determines will carry out the purpose of this part better than any of the actions prescribed in paragraphs (b)(1) through (10) of this section; and

(12) *Requiring merger.* Require the credit union to merge with another financial institution if one or more grounds exist for placing the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i).

(c) *Discretionary conservatorship or liquidation if no prospect of becoming adequately capitalized.* Notwithstanding any other actions required or permitted to be taken under this section, when a credit union becomes significantly undercapitalized (including by reclassification under § 702.102(b)), the NCUA Board may place the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i), provided that the credit union has no reasonable prospect of becoming adequately capitalized.

§ 702.109 Prompt corrective action for critically undercapitalized credit unions.

(a) *Mandatory supervisory actions by credit union.* A credit union which is critically undercapitalized must—

(1) *Earnings retention.* Increase net worth in accordance with § 702.106;

(2) *Submit net worth restoration plan.* Submit a net worth restoration plan pursuant to § 702.111;

(3) *Restrict increase in assets.* Not permit the credit union's total assets to increase except as provided in § 702.107(a)(3); and

(4) *Restrict member business loans.* Not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as provided in § 702.107(a)(4).

(b) *Discretionary supervisory actions by NCUA.* Subject to the applicable procedures for issuing, reviewing and enforcing directives set forth in subpart L of part 747 of this chapter, the NCUA Board may, by directive, take one or more of the following actions with respect to any critically undercapitalized credit union, or a director, officer or employee of such credit union, if it determines that those

actions are necessary to carry out the purpose of this part:

(1) *Requiring prior approval for acquisitions, branching, new lines of business.* Prohibit a credit union from, directly or indirectly, acquiring any interest in any business entity or financial institution, establishing or acquiring any additional branch office, or engaging in any new line of business, except as provided by § 702.107(b)(1);

(2) *Restricting transactions with and ownership of CUSO.* Restrict the credit union's transactions with a CUSO, or require the credit union to divest or reduce its ownership interest in a CUSO;

(3) *Restricting dividends paid.* Restrict the dividend rates that the credit union pays on shares as provided in § 702.107(b)(3);

(4) *Prohibiting or reducing asset growth.* Prohibit any growth in the credit union's assets or in a category of assets, or require the credit union to reduce assets or a category of assets;

(5) *Alter, reduce or terminate activity.* Require the credit union or its CUSO(s) to alter, reduce, or terminate any activity which poses excessive risk to the credit union;

(6) *Prohibiting nonmember deposits.* Prohibit the credit union from accepting all or certain nonmember deposits;

(7) *New election of directors.* Order a new election of the credit union's board of directors;

(8) *Dismissing director or senior executive officer.* Require the credit union to dismiss from office any director or senior executive officer, *provided however,* that a dismissal under this clause shall not be construed to be a formal administrative action for removal under 12 U.S.C. 1786(g);

(9) *Employing qualified senior executive officer.* Require the credit union to employ qualified senior executive officers (who, if the NCUA Board so specifies, shall be subject to its approval);

(10) *Restricting senior executive officers' compensation.* Reduce or, with the prior written approval of the NCUA Board, limit compensation to any senior executive officer to that officer's average rate of compensation (excluding bonuses and profit sharing) during the four (4) calendar quarters preceding the effective date of classification of the credit union as critically undercapitalized, and prohibit payment of a bonus or profit share to such officer;

(11) *Restrictions on payments on uninsured secondary capital.* Beginning 60 days after the effective date of classification of a credit union as critically undercapitalized, prohibit payments of principal, dividends or interest on the credit union's uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law;

(12) *Requiring prior approval.* Require a critically undercapitalized credit union to obtain the NCUA Board's prior written approval before doing any of the following:

(i) Entering into any material transaction not within the scope of an approved net worth restoration plan (or approved revised business plan under subpart C of this part);

(ii) Extending credit for transactions deemed highly leveraged by the NCUA Board or, if state-chartered, by the appropriate state official;

(iii) Amending the credit union's charter or bylaws, except to the extent necessary to comply with any law, regulation, or order;

(iv) Making any material change in accounting methods; and

(v) Paying dividends or interest on new share accounts at a rate exceeding the prevailing rates of interest on insured deposits in its relevant market area;

(13) *Other action to carry out prompt corrective action.* Restrict or require such other action by the credit union as the NCUA Board determines will carry out the purpose of this part better than any of the actions prescribed in paragraphs (b)(1) through (12) of this section; and

(14) *Requiring merger.* Require the credit union to merge with another financial institution if one or more grounds exist for placing the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i).

(c) *Mandatory conservatorship, liquidation or action in lieu thereof*—(1) *Action within 90 days.* Notwithstanding any other actions required or permitted to be taken under this section (and regardless of a credit union's prospect of becoming adequately capitalized), the NCUA Board must, within 90 calendar days after the effective date of classification of a credit union as critically undercapitalized—

(i) *Conservatorship.* Place the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(G); or

(ii) *Liquidation.* Liquidate the credit union pursuant to 12 U.S.C. 1787(a)(3)(A)(ii); or

(iii) *Other corrective action.* Take other corrective action, in lieu of conservatorship or liquidation, to better achieve the purpose of this part, provided that the NCUA Board documents why such action in lieu of conservatorship or liquidation would do so, *provided however,* that other corrective action may consist, in whole or in part, of complying with the quarterly timetable of steps and meeting the quarterly net worth targets prescribed in an approved net worth restoration plan.

(2) *Renewal of other corrective action.* A determination by the NCUA Board to take other corrective action in lieu of conservatorship or liquidation under paragraph (c)(1)(iii) of this section shall expire after an effective period ending no later than 180 calendar days after the determination is made, and the credit union shall be immediately placed into conservatorship or liquidation under paragraphs (c)(1)(i) and (ii) of this section, unless the NCUA Board makes a new determination under paragraph (c)(1)(iii) of this section before the end of the effective period of the prior determination;

(3) *Mandatory liquidation after 18 months* —(i) *Generally.* Notwithstanding paragraphs (c)(1) and (2) of this section, the NCUA Board must place a credit union into liquidation if it remains critically undercapitalized for a full calendar quarter, on a monthly average basis, following a period of 18 months from the effective date the credit union was first classified critically undercapitalized.

(ii) *Exception.* Notwithstanding paragraph (c)(3)(i) of this section, the NCUA Board may continue to take other corrective action in lieu of liquidation if it certifies that the credit union—

(A) Has been in substantial compliance with an approved net worth restoration plan requiring consistent improvement in net worth since the date the net worth restoration plan was approved;

(B) Has positive net income or has an upward trend in earnings that the NCUA Board projects as sustainable; and

(C) Is viable and not expected to fail.

(iii) *Review of exception.* The NCUA Board shall, at least quarterly, review the certification of an exception to liquidation under paragraph (c)(3)(ii) of this section and shall either—

(A) Recertify the credit union if it continues to satisfy the criteria of paragraph (c)(3)(ii) of this section; or

(B) Promptly place the credit union into liquidation, pursuant to 12 U.S.C. 1787(a)(3)(A)(ii), if it fails to satisfy the criteria of paragraph (c)(3)(ii) of this section.

(4) *Nondelegation.* The NCUA Board may not delegate its authority under paragraph (c) of this section, unless the

credit union has less than $5,000,000 in total assets. A credit union shall have a right of direct appeal to the NCUA Board of any decision made by delegated authority under this section within ten (10) calendar days of the date of that decision.

(d) *Mandatory liquidation of insolvent federal credit union.* In lieu of paragraph (c) of this section, a critically undercapitalized federal credit union that has a net worth ratio of less than zero percent (0%) may be placed into liquidation on grounds of insolvency pursuant to 12 U.S.C. 1787(a)(1)(A).

§ 702.110 Consultation with state officials on proposed prompt corrective action.

(a) *Consultation on proposed conservatorship or liquidation.* Before placing a federally insured state-chartered credit union into conservatorship (pursuant to 12 U.S.C. 1786(h)(1)(F) or (G)) or liquidation (pursuant to 12 U.S.C. 1787(a)(3)) as permitted or required under subparts A or B of this part to facilitate prompt corrective action—

(1) The NCUA Board shall seek the views of the appropriate state official (as defined in § 702.2), and give him or her an opportunity to take the proposed action;

(2) The NCUA Board shall, upon timely request of the appropriate state official, promptly provide him or her with a written statement of the reasons for the proposed conservatorship or liquidation, and reasonable time to respond to that statement; and

(3) If the appropriate state official makes a timely written response that disagrees with the proposed conservatorship or liquidation and gives reasons for that disagreement, the NCUA Board shall not place the credit union into conservatorship or liquidation unless it first considers the views of the appropriate state official and determines that—

(i) The NCUSIF faces a significant risk of loss if the credit union is not placed into conservatorship or liquidation; and

(ii) Conservatorship or liquidation is necessary either to reduce the risk of loss, or to reduce the expected loss, to the NCUSIF with respect to the credit union.

(b) *Nondelegation.* The NCUA Board may not delegate any determination under paragraph (a)(3) of this section.

(c) *Consultation on proposed discretionary action.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before taking any discretionary supervisory action under §§ 702.107(b), 702.108(b), 702.109(b), 702.204(b) and 702.205(b) with respect to a federally insured state-chartered credit union; shall provide prompt notice of its decision to the appropriate state official; and shall allow the appropriate state official to take the proposed action independently or jointly with NCUA.

§ 702.111 Net worth restoration plans (NWRP).

(a) *Schedule for filing*—(1) *Generally.* A credit union shall file a written net worth restoration plan (NWRP) with the appropriate Regional Director and, if state-chartered, the appropriate state official, within 45 calendar days of the effective date of classification as either undercapitalized, significantly undercapitalized or critically undercapitalized, unless the NCUA Board notifies the credit union in writing that its NWRP is to be filed within a different period.

(2) *Exception.* An otherwise adequately capitalized credit union that is reclassified undercapitalized on safety and soundness grounds under § 702.102(b) is not required to submit a NWRP solely due to the reclassification, unless the NCUA Board notifies the credit union that it must submit an NWRP.

(3) *Filing of additional plan.* Notwithstanding paragraph (a)(1) of this section, a credit union that has already submitted and is operating under a NWRP approved under this section is not required to submit an additional NWRP due to a change in net worth category (including by reclassification under § 702.102(b)), unless the NCUA Board notifies the credit union that it must submit a new NWRP. A credit union that is notified to submit a new or revised NWRP shall file the NWRP in writing with the appropriate Regional Director within 30 calendar days of receiving such notice, unless the NCUA Board notifies the credit union in writing that the NWRP is to be filed within a different period.

(4) *Failure to timely file plan.* When a credit union fails to timely file an NWRP pursuant to this paragraph, the NCUA Board shall promptly notify the credit union that it has failed to file an NWRP and that it has 15 calendar days from receipt of that notice within which to file an NWRP.

(b) *Assistance to small credit unions.* Upon timely request by a credit union having total assets of less than $10 million (regardless how long it has been in operation), the NCUA Board shall provide assistance in preparing an NWRP required to be filed under paragraph (a) of this section.

(c) *Contents of NWRP.* An NWRP must—

(1) Specify—

(i) A quarterly timetable of steps the credit union will take to increase its net worth ratio, and risk-based capital ratio if applicable, so that it becomes adequately capitalized by the end of the term of the NWRP, and to remain so for four (4) consecutive calendar quarters. If ''complex,'' the credit union is subject to a risk-based net worth requirement that may require a net worth ratio higher than six percent (6%) to become adequately capitalized;

(ii) The projected amount of net worth increases in each quarter of the term of the NWRP as required under § 702.106(a), or as permitted under § 702.106(b);

(iii) How the credit union will comply with the mandatory and any discretionary supervisory actions imposed on it by the NCUA Board under this subpart;

(iv) The types and levels of activities in which the credit union will engage; and

(v) If reclassified to a lower category under § 702.102(b), the steps the credit union will take to correct the unsafe or unsound practice(s) or condition(s);

(2) Include pro forma financial statements, including any off-balance sheet items, covering a minimum of the next two years; and

(3) Contain such other information as the NCUA Board has required.

(d) *Criteria for approval of NWRP.* The NCUA Board shall not accept a NWRP plan unless it—

(1) Complies with paragraph (c) of this section;

(2) Is based on realistic assumptions, and is likely to succeed in restoring the credit union's net worth; and

(3) Would not unreasonably increase the credit union's exposure to risk (including credit risk, interest-rate risk, and other types of risk).

(e) *Consideration of regulatory capital.* To minimize possible long-term losses to the NCUSIF while the credit union takes steps to become adequately capitalized, the NCUA Board shall, in evaluating an NWRP under this section, consider the type and amount of any form of regulatory capital which may become established by NCUA regulation, or authorized by state law and recognized by NCUA, which the credit union holds, but which is not included in its net worth.

(f) *Review of NWRP* —(1) *Notice of decision.* Within 45 calendar days after receiving an NWRP under this part, the NCUA Board shall notify the credit union in writing whether the NWRP has been approved, and shall provide reasons for its decision in the event of disapproval.

(2) *Delayed decision.* If no decision is made within the time prescribed in paragraph (f)(1) of this section, the NWRP is deemed approved.

(3) *Consultation with state officials.* In the case of an NWRP submitted by a federally insured state-chartered credit union (whether an original, new, additional, revised or amended NWRP), the NCUA Board shall, when evaluating the NWRP, seek and consider the views of the appropriate state official, and provide prompt notice of its decision to the appropriate state official.

(g) *NWRP not approved* —(1) *Submission of revised NWRP.* If an NWRP is rejected by the NCUA Board, the credit union shall submit a revised NWRP within 30 calendar days of receiving notice of disapproval, unless it is notified in writing by the NCUA Board that the revised NWRP is to be filed within a different period.

(2) *Notice of decision on revised NWRP.* Within 30 calendar days after receiving a revised NWRP under paragraph (g)(1) of this section, the NCUA Board shall notify the credit union in writing whether the revised NWRP is approved. The Board may extend the time within which notice of its decision shall be provided.

(3) *Disapproval of reclassified credit union's NWRP.* A credit union which has been classified significantly undercapitalized shall remain so classified pending NCUA Board approval of a new or revised NWRP.

(4) *Submission of multiple unapproved NWRPs.* The submission of more than two NWRPs that are not approved is considered an unsafe and unsound condition and may subject the credit union to administrative enforcement actions under section 206 of the FCUA, 12 U.S.C. 1786 and 1790d.

(h) *Amendment of NWRP.* A credit union that is operating under an approved NWRP may, after prior written notice to, and approval by the NCUA Board, amend its NWRP to reflect a change in circumstance. Pending approval of an amended NWRP, the credit union shall implement the NWRP as originally approved.

(i) *Publication.* An NWRP need not be published to be enforceable because publication would be contrary to the public interest.

(j) *Termination of NWRP.* For purposes of this part, an NWRP terminates once the credit union is classified as adequately capitalized and remains so for four consecutive quarters. For example, if a credit union with an active NWRP attains the classification as adequately classified on December 31, 2015 this would be quarter one and the fourth consecutive quarter would end September 30, 2016.

§ 702.112 Reserves.

Each credit union shall establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or in special cases by the NCUA Board or appropriate state official.

§ 702.113 Full and fair disclosure of financial condition.

(a) *Full and fair disclosure defined.* ''Full and fair disclosure'' is the level of disclosure which a prudent person would provide to a member of a credit union, to NCUA, or, at the discretion of the board of directors, to creditors to fairly inform them of the financial condition and the results of operations of the credit union.

(b) *Full and fair disclosure implemented.* The financial statements of a credit union shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation (allowance) accounts as may be necessary to present fairly the financial condition; and all income and expenses necessary to present fairly the statement of income for the reporting period.

(c) *Declaration of officials.* The Statement of Financial Condition, when presented to members, to creditors or to NCUA, shall contain a dual declaration by the treasurer and the chief executive officer, or in the latter's absence, by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report and related financial statements are true and correct to the best of their knowledge and belief and present fairly the financial condition and the statement of income for the period covered.

(d) *Charges for loan losses.* Full and fair disclosure demands that a credit union properly address charges for loan losses as follows:

(1) Charges for loan losses shall be made in accordance with GAAP;

(2) The ALLL established for loans must fairly present the probable losses for all categories of loans and the proper valuation of loans. The valuation allowance must encompass specifically identified loans, as well as estimated losses inherent in the loan portfolio, such as loans and pools of loans for which losses have been incurred but are not identifiable on a specific loan-by-loan basis;

(3) Adjustments to the valuation ALLL will be recorded in the expense account ''Provision for Loan and Lease Losses''; and

(4) At a minimum, adjustments to the ALLL shall be made prior to the distribution or posting of any dividend to the accounts of members.

§ 702.114 Payment of dividends.

(a) *Restriction on dividends.* Dividends shall be available only from net worth, if any.

(b) *Payment of dividends if retained earnings depleted.* The board of directors of a well capitalized credit union that has depleted the balance of its retained earnings may authorize dividend payments, provided that either—

(1) The payment of dividends will not cause the credit union's net worth classification to fall below adequately capitalized under subpart A of this part; or

(2) If the payment of dividends will cause the net worth classification to fall below adequately capitalized, the appropriate Regional Director and, if state-chartered, the appropriate state official, have given prior written approval (in an NWRP or otherwise) to pay a dividend. The request for written approval must include the plan for eliminating any negative retained earnings balance.

(c) *Restriction on payment of dividends if, after payment of dividends, the credit union's net worth ratio would be less than 6 percent.* If, after payment of a dividend or refund of interest, a well capitalized credit union's net worth ratio would fall below 6 percent in the current quarter, the board of directors of the credit union may not:

(1) Declare a dividend at a rate that is higher than the prevailing rates paid on comparable accounts and maturities in the relevant market area;

(2) Declare a non-repetitive dividend; or

(3) Authorize a refund of interest.

Subpart B—Alternative Prompt Corrective Action for New Credit Unions

§ 702.201 Scope and definition.

(a) *Scope.* This subpart B applies in lieu of subpart A of this part exclusively to credit unions defined in paragraph (b) of this section as ''new'' pursuant to section 216(b)(2) of the FCUA, 12 U.S.C. 1790d(b)(2).

(b) *New credit union defined.* A ''new'' credit union for purposes of this subpart is a credit union that both has been in operation for less than ten (10) years and has total assets of not more than $10 million. Once a credit union reports total assets of more than $10 million on a Call Report, the credit union is no longer new, even if its assets subsequently decline below $10 million.

(c) *Effect of spin-offs.* A credit union formed as the result of a ''spin-off'' of a group from the field of membership of an existing credit union is deemed to be in operation since the effective date of the spin-off. A credit union whose total assets decline below $10 million because a group within its field of membership has been spun-off is deemed ''new'' if it has been in operation less than 10 years.

(d) *Actions to evade prompt corrective action.* If the NCUA Board determines that a credit union was formed, or was reduced in asset size as a result of a spin-off, or was merged, primarily to qualify as ''new'' under this subpart, the credit union shall be deemed subject to prompt corrective action under subpart A of this part.

§ 702.202 Net worth categories for new credit unions.

(a) *Net worth measures.* For purposes of this part, a new credit union must determine its capital classification quarterly according to its net worth ratio.

(b) *Effective date of net worth classification of new credit union.* For purposes of subpart B of this part, the effective date of a new credit union's classification within a capital category in paragraph (c) of this section shall be determined as provided in § 702.101(b); and written notice to the NCUA Board of a decline in net worth classification in paragraph (c) of this section shall be given as required by § 702.101(c).

(c) *Net worth categories.* A credit union defined as ''new'' under this section shall be classified (Table 1 of this section)—

(1) *Well capitalized* if it has a net worth ratio of seven percent (7%) or greater;

(2) *Adequately capitalized* if it has a net worth ratio of six percent (6%) or more but less than seven percent (7%);

(3) *Moderately capitalized* if it has a net worth ratio of three and one-half percent (3.5%) or more but less than six percent (6%);

(4) *Marginally capitalized* if it has a net worth ratio of two percent (2%) or more but less than three and one-half percent (3.5%);

(5) *Minimally capitalized* if it has a net worth ratio of zero percent (0%) or greater but less than two percent (2%); and

(6) *Uncapitalized* if it has a net worth ratio of less than zero percent (0%) (*e.g.,* a deficit in retained earnings).

TABLE 1 TO § 702.202—CAPITAL CATEGORIES FOR NEW CREDIT UNIONS

A new credit union's capital classification is . . .	If it's net worth ratio is . . .
Well Capitalized	7% or above.
Adequately Capitalized	6 to 7%.
Moderately Capitalized	3.5% to 5.99%.
Marginally Capitalized	2% to 3.49%.
Minimally Capitalized	0% to 1.99%.
Uncapitalized	Less than 0%.

(d) *Reclassification based on supervisory criteria other than net worth.* Subject to § 702.102(b), the NCUA Board may reclassify a well capitalized, adequately capitalized or moderately capitalized new credit union to the next lower capital category (each of such actions is hereinafter referred to generally as ''reclassification'') in either of the circumstances prescribed in § 702.102(b).

(e) *Consultation with state officials.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before reclassifying a federally insured state-chartered credit union under paragraph (d) of this section, and shall promptly notify the appropriate state official of its decision to reclassify.

§ 702.203 Prompt corrective action for adequately capitalized new credit unions.

Beginning on the effective date of classification, an adequately capitalized new credit union must increase the dollar amount of its net worth by the amount reflected in its approved initial or revised business plan in accordance with § 702.204(a)(2), or in the absence of such a plan, in accordance with § 702.106 until it is well capitalized.

§ 702.204 Prompt corrective action for moderately capitalized, marginally capitalized, or minimally capitalized new credit unions.

(a) *Mandatory supervisory actions by new credit union.* Beginning on the date of classification as moderately capitalized, marginally capitalized or minimally capitalized (including by reclassification under § 702.202(d)), a new credit union must—

(1) *Earnings retention.* Increase the dollar amount of its net worth by the amount reflected in its approved initial or revised business plan;

(2) *Submit revised business plan.* Submit a revised business plan within the time provided by § 702.206 if the credit union either:

(i) Has not increased its net worth ratio consistent with its then-present approved business plan;

(ii) Has no then-present approved business plan; or

(iii) Has failed to comply with paragraph (a)(3) of this section; and

(3) *Restrict member business loans.* Not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as of the preceding quarter-end unless it is granted an exception under 12 U.S.C. 1757a(b).

(b) *Discretionary supervisory actions by NCUA.* Subject to the applicable procedures set forth in subpart L of part 747 of this chapter for issuing, reviewing and enforcing directives, the NCUA Board may, by directive, take one or more of the actions prescribed in § 702.109(b) if the credit union's net worth ratio has not increased consistent with its then-present business plan, or the credit union has failed to undertake any mandatory supervisory action prescribed in paragraph (a) of this section.

(c) *Discretionary conservatorship or liquidation.* Notwithstanding any other actions required or permitted to be taken under this section, the NCUA Board may place a new credit union which is moderately capitalized, marginally capitalized or minimally capitalized (including by reclassification under § 702.202(d)) into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i), provided that the credit union has no reasonable prospect of becoming adequately capitalized.

§ 702.205 Prompt corrective action for uncapitalized new credit unions.

(a) *Mandatory supervisory actions by new credit union.* Beginning on the effective date of classification as uncapitalized, a new credit union must—

(1) *Earnings retention.* Increase the dollar amount of its net worth by the amount reflected in the credit union's approved initial or revised business plan;

(2) *Submit revised business plan.* Submit a revised business plan within the time provided by § 702.206, providing for alternative means of funding the credit union's earnings deficit, if the credit union either:

(i) Has not increased its net worth ratio consistent with its then-present approved business plan;

(ii) Has no then-present approved business plan; or

(iii) Has failed to comply with paragraph (a)(3) of this section; and

(3) *Restrict member business loans.* Not increase the total dollar amount of member business loans as provided in § 702.204(a)(3).

(b) *Discretionary supervisory actions by NCUA.* Subject to the procedures set forth in subpart L of part 747 of this chapter for issuing, reviewing and enforcing directives, the NCUA Board may, by directive, take one or more of the actions prescribed in § 702.109(b) if the credit union's net worth ratio has not increased consistent with its then-present business plan, or the credit union has failed to undertake any mandatory supervisory action prescribed in paragraph (a) of this section.

(c) *Mandatory liquidation or conservatorship.* Notwithstanding any other actions required or permitted to be taken under this section, the NCUA Board—

(1) *Plan not submitted.* May place into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(ii), or conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), an uncapitalized new credit union which fails to submit a revised business plan within the time provided under paragraph (a)(2) of this section; or

(2) *Plan rejected, approved, implemented.* Except as provided in paragraph (c)(3) of this section, must place into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(ii), or conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), an uncapitalized new credit union that remains uncapitalized one hundred twenty (120) calendar days after the later of:

(i) The effective date of classification as uncapitalized; or

(ii) The last day of the calendar month following expiration of the time period provided in the credit union's initial business plan (approved at the time its charter was granted) to remain uncapitalized, regardless whether a revised business plan was rejected, approved or implemented.

(3) *Exception.* The NCUA Board may decline to place a new credit union into liquidation or conservatorship as provided in paragraph (c)(2) of this section if the credit union documents to the NCUA Board why it is viable and has a reasonable prospect of becoming adequately capitalized.

(d) *Mandatory liquidation of uncapitalized federal credit union.* In lieu of paragraph (c) of this section, an uncapitalized federal credit union may be placed into liquidation on grounds of insolvency pursuant to 12 U.S.C. 1787(a)(1)(A).

§ 702.206 Revised business plans (RBP) for new credit unions.

(a) *Schedule for filing*—(1) *Generally.* Except as provided in paragraph (a)(2) of this section, a new credit union classified moderately capitalized or lower must file a written revised business plan (RBP) with the appropriate Regional Director and, if state-chartered, with the appropriate state official, within 30 calendar days of either:

(i) The last of the calendar month following the end of the calendar quarter that the credit union's net worth ratio has not increased consistent with its the-present approved business plan;

(ii) The effective date of classification as less than adequately capitalized if the credit union has no then-present approved business plan; or

(iii) The effective date of classification as less than adequately capitalized if the credit union has increased the total amount of member business loans in violation of § 702.204(a)(3).

(2) *Exception.* The NCUA Board may notify the credit union in writing that its RBP is to be filed within a different period or that it is not necessary to file an RBP.

(3) *Failure to timely file plan.* When a new credit union fails to file an RBP as provided under paragraphs (a)(1) or (a)(2) of this section, the NCUA Board shall promptly notify the credit union that it has failed to file an RBP and that it has 15 calendar days from receipt of that notice within which to do so.

(b) *Contents of revised business plan.* A new credit union's RBP must, at a minimum—

(1) Address changes, since the new credit union's current business plan was approved, in any of the business plan elements required for charter approval under chapter 1, section IV.D. of appendix B to part 701 of this chapter, or for state-chartered credit unions under applicable state law;

(2) Establish a timetable of quarterly targets for net worth during each year in which the RBP is in effect so that the credit union becomes adequately capitalized by the time it no longer qualifies as ''new'' per § 702.201(b);

(3) Specify the projected amount of earnings of net worth increases as provided under § 702.204(a)(1) or 702.205(a)(1);

(4) Explain how the new credit union will comply with the mandatory and discretionary supervisory actions imposed on it by the NCUA Board under this subpart;

(5) Specify the types and levels of activities in which the new credit union will engage;

(6) In the case of a new credit union reclassified to a lower category under § 702.202(d), specify the steps the credit union will take to correct the unsafe or unsound condition or practice; and

(7) Include such other information as the NCUA Board may require.

(c) *Criteria for approval.* The NCUA Board shall not approve a new credit union's RBP unless it—

(1) Addresses the items enumerated in paragraph (b) of this section;

(2) Is based on realistic assumptions, and is likely to succeed in building the credit union's net worth; and

(3) Would not unreasonably increase the credit union's exposure to risk (including credit risk, interest-rate risk, and other types of risk).

(d) *Consideration of regulatory capital.* To minimize possible long-term losses to the NCUSIF while the credit union takes steps to become adequately capitalized, the NCUA Board shall, in evaluating an RBP under this section, consider the type and amount of any form of regulatory capital which may become established by NCUA regulation, or authorized by state law and recognized by NCUA, which the credit union holds, but which is not included in its net worth.

(e) *Review of revised business plan*—(1) *Notice of decision.* Within 30 calendar days after receiving an RBP under this section, the NCUA Board shall notify the credit union in writing whether its RBP is approved, and shall provide reasons for its decision in the event of disapproval. The NCUA Board may extend the time within which notice of its decision shall be provided.

(2) *Delayed decision.* If no decision is made within the time prescribed in paragraph (e)(1) of this section, the RBP is deemed approved.

(3) *Consultation with state officials.* When evaluating an RBP submitted by a federally insured state-chartered new credit union (whether an original, new or additional RBP), the NCUA Board shall seek and consider the views of the appropriate state official, and provide prompt notice of its decision to the appropriate state official.

(f) *Plan not approved*—(1) *Submission of new revised plan.* If an RBP is rejected by the NCUA Board, the new credit union shall submit a new RBP within 30 calendar days of receiving notice of disapproval of its initial RBP, unless it is notified in writing by the NCUA Board that the new RBP is to be filed within a different period.

(2) *Notice of decision on revised plan.* Within 30 calendar days after receiving an RBP under paragraph (f)(1) of this section, the NCUA Board shall notify the credit union in writing whether the new RBP is approved. The Board may extend the time within which notice of its decision shall be provided.

(3) *Submission of multiple unapproved RBPs.* The submission of more than two RBPs that are not approved is considered an unsafe and

unsound condition and may subject the credit union to administrative enforcement action pursuant to section 206 of the FCUA, 12 U.S.C. 1786 and 1790d.

(g) *Amendment of plan.* A credit union that has filed an approved RBP may, after prior written notice to and approval by the NCUA Board, amend it to reflect a change in circumstance. Pending approval of an amended RBP, the new credit union shall implement its existing RBP as originally approved.

(h) *Publication.* An RBP need not be published to be enforceable because publication would be contrary to the public interest.

§ 702.207 Incentives for new credit unions.

(a) *Assistance in revising business plans.* Upon timely request by a credit union having total assets of less than $10 million (regardless how long it has been in operation), the NCUA Board shall provide assistance in preparing a revised business plan required to be filed under § 702.206.

(b) *Assistance.* Management training and other assistance to new credit unions will be provided in accordance with policies approved by the NCUA Board.

(c) *Small credit union program.* A new credit union is eligible to join and receive comprehensive benefits and assistance under NCUA's Small Credit Union Program.

§ 702.208 Reserves.

Each new credit union shall establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or in special cases by the NCUA Board or appropriate state official.

§ 702.209 Full and fair disclosure of financial condition.

(a) *Full and fair disclosure defined.* ''Full and fair disclosure'' is the level of disclosure which a prudent person would provide to a member of a new credit union, to NCUA, or, at the discretion of the board of directors, to creditors to fairly inform them of the financial condition and the results of operations of the credit union.

(b) *Full and fair disclosure implemented.* The financial statements of a new credit union shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation (allowance) accounts as may be necessary to present fairly the financial condition; and all income and expenses necessary to present fairly the statement of income for the reporting period.

(c) *Declaration of officials.* The Statement of Financial Condition, when presented to members, to creditors or to NCUA, shall contain a dual declaration by the treasurer and the chief executive officer, or in the latter's absence, by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report and related financial statements are true and correct to the best of their knowledge and belief and present fairly the financial condition and the statement of income for the period covered.

(d) *Charges for loan losses.* Full and fair disclosure demands that a new credit union properly address charges for loan losses as follows:

(1) Charges for loan losses shall be made in accordance with generally accepted accounting principles (GAAP);

(2) The allowance for loan and lease losses (ALL) established for loans must fairly present the probable losses for all categories of loans and the proper valuation of loans. The valuation allowance must encompass specifically identified loans, as well as estimated losses inherent in the loan portfolio, such as loans and pools of loans for which losses have been incurred but are not identifiable on a specific loan-by-loan basis;

(3) Adjustments to the valuation ALL will be recorded in the expense account ''Provision for Loan and Lease Losses; and

(4) At a minimum, adjustments to the ALL shall be made prior to the distribution or posting of any dividend to the accounts of members.

§ 702.210 Payment of dividends.

(a) *Restriction on dividends.* Dividends shall be available only from net worth, if any.

(b) *Payment of dividends if retained earnings depleted.* The board of directors of a well capitalized new credit union that has depleted the balance of its retained earnings may authorize dividend payments, provided that either—

(1) The payment of dividends will not cause the credit union's net worth classification to fall below adequately capitalized under subpart B of this part; or

(2) If the payment of dividends will cause the net worth classification to fall below adequately capitalized, the appropriate Regional Director and, if state-chartered, the appropriate state official, have given prior written approval (in an NWRP or otherwise) to pay a dividend. The request for written approval must include the plan for eliminating any negative retained earnings balance.

(c) *Restriction on payment of dividends if, after payment of dividends, the new credit union's net worth ratio would be less than 6 percent.* If, after payment of a dividend or refund of interest, a well capitalized new credit union's net worth ratio would fall below 6 percent in the current quarter, the board of directors of the new credit union may not:

(1) Declare a dividend at a rate that is higher than the prevailing rates paid on comparable accounts and maturities in the relevant market area;

(2) Declare a non-repetitive dividend; or

(3) Authorize a refund of interest.

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 9. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

§ 703.14 [Amended]

■ 10. Amend § 703.14 as follows:

■ a. In paragraph (i) remove the words ''net worth classification'' and add in their place the words ''capital classification'', and remove the words ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained 'well capitalized' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement,''.

■ b. In paragraph (j)(4) remove the words ''net worth classification'' and add in their place the words ''capital classification'', and remove the words ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained 'well capitalized' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement,''.

PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

■ 11. The authority citation for part 713 continues to read as follows:

Authority: 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

■ 12. Amend § 713.6 as follows:

■ a. In paragraph (a)(1), revise the table; and

■ b. In paragraph (c) remove the words ''net worth'' each place they appear and add in their place the word ''capital'', and remove the words ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained 'well capitalized' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement,''.

§ 713.6 What is the permissible deductible?

(a)(1) * * *

Assets	Maximum deductible
$0 to $100,000	No deductible allowed.
$100,001 to $250,000	$1,000.
$250,000 to $1,000,000	$2,000.
Over $1,000,000	$2,000 plus 1/1000 of total assets up to a maximum of $200,000; for credit unions that have received a composite CAMEL rating of ''1'' or ''2'' for the last two (2) full examinations and maintained a capital classification of ''well capitalized'' under part 702 of this chapter for the six (6) immediately preceding quarters the maximum deductible is $1,000,000.

* * * * *

PART 723—MEMBER BUSINESS LOANS

■ 13. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

§ 723.7 [Amended]

■ 14. Amend § 723.7(c)(1) by removing the words ''as defined by § 702.102(a)(1)'' and adding in their place the words ''under part 702''.

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 15. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134; Pub. L. 109–351; 120 Stat. 1966.

§ 747.2001 [Amended]

■ 16. Amend § 747.2001(a) by removing the citation ''702.302(d)'' and adding in its place the citation ''702.202(d)''.

§ 747.2002 [Amended]

■ 17. Amend § 747.2002(a) by removing the words ''§§ 702.202(b), 702.203(b) and 702.204(b)'' and adding in their place the words ''§§ 702.107(b), 702.108(b), or 702.109(b)'', and by removing the words ''§§ 702.304(b) or 702.305(b)'' and adding in their place the words ''§§ 702.204(b) or 702.205(b)''.

§ 747.2003 [Amended]

■ 18. Amend § 747.2003(a) by removing the citation ''702.302(d)'' and adding in its place the citation ''702.202(d)''.

■ 19. Add § 747.2006 to subpart L to read as follows:

§ 747.2006 Review of order imposing individual minimum capital requirements (IMCR).

(a) *Notice of proposed individual minimum capital requirements.* When NCUA proposes to impose individualized minimal capital requirements for a particular credit union pursuant to § 702.105 of this chapter (each such action hereinafter referred to as an ''IMCR''), NCUA shall issue and serve on the credit union reasonable prior notice of the proposed IMCR. NCUA shall also forward a copy of the notifying letter to the appropriate state supervisory authority (SSA) if a state-chartered corporate credit union would be subject to an IMCR.

(b) *Contents of the Notice.* A notice of intention to impose an IMCR for a credit union based on particular capital conditions at a credit union shall state the following:

(1) The credit union's net worth ratio, risk-based capital ratio and net worth classification.

(2) The specific minimum capital levels that the NCUA Board intends to impose on the credit union under the IMCR, and the specific causes for determining that the higher IMCR is necessary or appropriate for the credit union.

(3) The proposed schedule for compliance with the new requirement.

(4) That the credit union must file a written response to the notice, which shall be due no less than 30 calendar days from the date of service of the notice. The NCUA Board may extend the time period for good cause, and the time period for response by the insured credit union may be shortened for good cause:

(i) When, in the opinion of NCUA, the condition of the credit union so requires, and NCUA informs the credit union of the shortened response period in the notice; or

(ii) With the consent of the credit union.

(c) *Contents of response to notice.* A credit union's response to a notice under paragraph (b) of this section must include:

(1) An explanation of why it contends the IMCR is not an appropriate exercise of discretion under this part;

(2) A request that the NCUA Board modify or not issue the IMCR;

(3) Any information, mitigating circumstances, documentation, or other evidence in support of the credit union's position that the credit union wants NCUA to consider in deciding whether to establish or to amend an IMCR for the credit union; and

(4) If desired, a request for a recommendation from the NCUA's Ombudsman pursuant to paragraph (g) of this section.

(d) *Failure to file response.* Failure by the credit union to respond within 30 days, or such other time period as may be specified by NCUA, may constitute a waiver of any objections to the proposed IMCR or to the schedule for complying with it, unless NCUA has provided an extension of the response period for good cause.

(e) *Final decision by NCUA.* After expiration of the response period, NCUA will decide whether or not the proposed IMCR should be established for the credit union, or whether that proposed requirement should be adopted in modified form, based on a review of the credit union's response and other relevant information. NCUA's decision will address comments received within the response period from the credit union and the appropriate state supervisory authority (SSA) (in the case of a state-chartered credit union) and will state the level of capital required, the schedule for compliance with this requirement, and any specific remedial action the credit union could take to eliminate the need for continued applicability of the IMCR. NCUA will provide the credit union and the appropriate SSA (if a state-chartered credit union is involved) with a written decision on the IMCR, addressing the substantive comments made by the credit union and setting forth the decision and the basis for that decision. Upon receipt of this decision by the credit union, the IMCR becomes effective and binding upon the credit union. This decision represents final agency action.

(f) *Request to modify or rescind IMCR.* A credit union that is subject to an existing IMCR may request in writing that the NCUA Board reconsider the

terms of the IMCR due to changed circumstances. Unless otherwise ordered by the NCUA Board, the IMCR shall remain in effect while such request is pending. A request under this paragraph (f) that remains pending 60 days following receipt by the NCUA Board is deemed granted.

(g) *Ombudsman.* A credit union may request in writing the recommendation of NCUA's ombudsman to modify or to not issue a proposed IMCR under paragraph (b) of this section, or to modify or rescind an existing IMCR due to changed circumstances under paragraph (f) of this section. A credit union which fails to request the ombudsman's recommendation in a response under paragraph (c) of this section, or in a request under paragraph (f) of this section, shall be deemed to have waived the opportunity to do so. The ombudsman shall promptly notify the credit union and the NCUA Board of his or her recommendation.

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Part III

Environmental Protection Agency

40 CFR Parts 51, 60, 61, et al.

Revisions to Test Methods and Testing Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 60, 61, and 63

[EPA–HQ–OAR–2010–0114; FRL–9906–23–OAR]

RIN 2060–AQ01

Revisions to Test Methods and Testing Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates technical and editorial corrections for source testing of emissions and operations. Some current testing provisions contain inaccuracies and outdated procedures, and new alternatives that have been approved are being added. These revisions will improve the quality of data and will give testers additional flexibility to use the newly approved alternative procedures.

DATES: This final rule is effective on February 27, 2014. The incorporation by reference materials listed in the rule are approved by the Director of the Federal Register as of February 27, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0114. 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, William Jefferson Clinton (WJC) Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Docket Facility and the Public Reading Room are 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: Ms. Lula Melton, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (E143–02), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2910; fax number: (919) 541–0516; email address: *melton.lula@epa.gov.*

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I. General Information

A. Does this action apply to me?

The revisions promulgated in this final rule apply to testing at a number of source categories. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I obtain a copy of this action?

In addition to being available in the docket, an electronic copy of this rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule will be placed 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.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by April 28, 2014. Under section 307(d)(7)(B) of the CAA, 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. Moreover, under section 307(b)(2) of the CAA, the requirements established by this action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background

The revisions to test methods and testing regulations were proposed in the **Federal Register** on January 9, 2012, with a public comment period that ended March 9, 2012. Thirty-eight comment letters were received from the public. Changes were made to this final rule based on the public comments.

III. Summary of Amendments

A. Appendix M of Part 51

In the introduction of Appendix M of part 51, Methods 3A and 19 are added to the list of methods not requiring the use of audit samples.

B. Method 201A of Appendix M of Part 51

Revisions are made to Method 201A as published on December 21, 2010. Typographical errors in references to acetone blanks, isokinetic sampling rate, source gas temperatures, stack blockage dimensions by the sampling heads, and particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM_{10}) in Sections 7.2.1, 8.3.4(b), 8.3.4.1, 8.7.2.2, and 8.7.5.5(a), respectively, are corrected. An erroneous reference to Methods 4A and 5 in Section 10.1 when using a standard pitot tube is corrected to refer to Methods 1 and 2. Section 10.5, which addresses Class A volumetric glassware is deleted because it is not needed. For those filters that cannot be weighed to a constant weight in Section 11.2.1, instructions are added to flag and report the data as a minimum value. It is noted that the nozzle, front half, and in-stack filter samples need to be speciated into organic and inorganic fractions similar to the practice in Method 17. The method now notes that neither Method 17 nor 201A require a separate analysis of the filter for inorganic and organic particulate matter. Clarity is added for using Method 17 for quantifying condensable particulate matter. An incorrect term in Equation 9 of Section 12.5 is corrected. In the nomenclature in Section 12.1, V_b, the volume of aliquot taken for ion chromatography (IC) analysis, is deleted.

C. Method 202 of Appendix M of Part 51

Revisions are made to Method 202 as published on December 21, 2010. In Sections 7.2.1 and 7.2.2, an error in the units of the acetone blank is corrected. In Section 8.5.3.1, the text erroneously referring to empty impingers is deleted. Section 11.2.1 is clarified concerning the use of Method 17 for quantifying condensable particulate matter. Figures 2 and 3 are revised to correctly show the first impinger with an extended stem instead of a shortened one to be consistent with the method text, and the condensed moisture and sample portion of the sampling train are labeled to make it easy to identify. Figures 4, 5, and 6 are republished because of the poor print quality in the December 21, 2010, publication.

D. General Provisions (Subpart A) Part 60

In the General Provisions of part 60, Section 60.13(d)(1) is revised to remove the phrase ''automatically, intrinsic to the opacity monitor.'' Methods 3A and 19 are added to the list of methods not requiring the use of audit samples in Section 60.8(g). A new Section 60.8(i) is added to allow the use of Method 205 of 40 CFR part 51, Appendix M, ''Verification of Gas Dilution Systems for Field Instrument Calibrations,'' as an alternative provision whenever multiple calibration gases are required under part 60. The agency notes, however, that the use of calibration gas dilution devices continues to be disallowed for part 75 applications (see 40 CFR 75.22(a)(5)(i)). Section 60.17 is revised to arrange the consensus standards that are incorporated by reference in alpha-numeric order.

E. Industrial-Commercial-Institutional Steam Generating Units (Subpart Db) Part 60

In subpart Db, Method 320 is allowed as an alternative for determining nitrogen oxides (NO_X) concentration in Section 60.46b(f)(1)(ii), (h)(1) and (2), and sulfur dioxide (SO_2) concentration in Section 60.47b(b)(2).

F. Hospital/Medical/Infectious Waste Incinerators (Subpart Ec) Part 60

In subpart Ec, the definition of medical/infectious wastes in Section 60.51c is revised to correct the misspelling of ''cremation.''

G. Sulfuric Acid Plants (Subpart H) Part 60

In subpart H, an equation for calculating the SO_2 emission rate in Section 60.84(d) is corrected.

H. Sewage Treatment Plants (Subpart O) Part 60

In subpart O, a reference to Method 209F in Section 60.154(b)(5) is revised to reflect a newer available version of the method (i.e., 2540G).

I. Kraft Pulp Mills (Subpart BB) Part 60

In subpart BB, a typographical error is corrected in the equation for correcting the total reduced sulfur concentration to 10 percent oxygen.

J. Stationary Gas Turbines (Subpart GG) Part 60

In subpart GG, the definitions of terms for the equation in Section 60.335(b)(l) are revised to allow the reference combustor inlet absolute pressure to be measured in millimeters of mercury (mm Hg). The site barometric pressure is allowed as an alternative to the observed combustor inlet absolute pressure for calculating the mean NO_X emission concentration.

K. Lead-Acid Battery Manufacturing Plants (Subpart KK) Part 60

In subpart KK, Method 29 is allowed as an alternative to Method 12 in Section 60.374(b)(1) and (c)(2) for determining the lead concentration and flow rate of the effluent gas. An error in the equation for calculating the lead emission concentration in 60.374(b)(2) is corrected.

L. Metallic Mineral Processing Plants (Subpart LL) Part 60

In subpart LL, an error in the value of the particulate matter standard in Section 60.382(a)(1) is corrected from 0.02 g/dscm to 0.05 g/dscm. An alternative procedure, wherein a single visible emission observer can conduct visible emission observations for up to three fugitive, stack, or vent emission points within a 15-second interval, is allowed.

M. Asphalt Processing and Asphalt Roofing Manufacture (Subpart UU) Part 60

In subpart UU, an error in the value of the particulate matter standard for saturated felt or smooth-surfaced roll roofing is corrected from 0.04 kg/Mg to 0.4 kg/Mg.

N. Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations (Subpart NNN) Part 60

In subpart NNN, references to paragraphs in Section 60.660(c)(4) and Section 60.665(h)(2) and (3) are corrected.

O. Stationary Compression Ignition Internal Combustion Engines (Subpart IIII) Part 60

In Subpart IIII, the requirement to use Method 1 or 1A for sampling point selection in testing gaseous emission from engines with smaller ducts is dropped, and single- or three-point sampling, depending on duct size, is added.

P. Stationary Spark Ignition Internal Combustion Engines (Subpart JJJJ) Part 60

In Subpart JJJJ, the requirement to use Method 1 or 1A for sampling point selection in testing gaseous emissions from engines with smaller ducts is dropped, and single- or three-point sampling, depending on duct size, is added.

Q. Method 1 of Appendix A–1 of Part 60

In Method 1, the distances from the sampling point to flow disturbances is clarified in Figure 1–1, and Figure 1–2 is corrected to show the proper demarcation between the requirement for 12 and 16 sampling points.

R. Method 2 of Appendix A–1 of Part 60

In Method 2, a pressure stability specification for the pitot tube leak-check is added. An erroneous reference to Figure 2–6B is corrected to reference Figure 2–7B. An error in a term in the denominator of Equation 2–7 is corrected. The velocity constant in English units used in Equation 2–7 is corrected by changing the units from m/sec to ft/sec. The term for absolute temperature in Equations 2–7 and 2–8 is corrected to represent the average of the absolute temperatures; an inadvertently omitted term is added to Section 12.1 for the average absolute temperature; and calibrating a barometer against a NIST-traceable barometer is allowed as an alternative to calibrating against a mercury barometer.

S. Method 2A of Appendix A–1 of Part 60

In Method 2A, calibrating a barometer against a NIST-traceable barometer is allowed as an alternative to calibrating against a mercury barometer.

T. Method 2B of Appendix A–1 of Part 60

In Method 2B, nomenclature errors are corrected and the assumed ambient carbon dioxide concentration used in the calculations is changed from 300 to 380 ppm to closer approximate current ambient levels.

U. Method 2D of Appendix A–1 of Part 60

In Method 2D, calibrating a barometer against a NIST-traceable barometer is allowed as an alternative to calibrating against a mercury barometer.

V. Method 3A of Appendix A–2 of Part 60

In Method 3A, a redundant sentence noting that pre-cleaned air may be used for the high-level calibration gas is deleted.

W. Method 3C of Appendix A–2 of Part 60

In Method 3C, an equation for correcting the sample nitrogen concentration for tank dilution is added as a supplemental calculation option for Method 25C samples.

X. Method 4 of Appendix A–3 of Part 60

In Method 4, the English value for the leak rate exceedance in Section 9.1 is corrected from 0.20 cfm to 0.020 cfm. Method 6A, Method 320, and a calculation using F-factors are added as alternatives to Method 4 for the moisture determination.

Y. Method 5 of Appendix A–3 of Part 60

In Method 5, it is clarified that the deionized water used in the analysis of material caught in the impingers must have ≤0.001 percent residue; the factor K is corrected to read K' in Equation 5–13; calibrating a barometer against a NIST-traceable barometer is allowed as an alternative to calibrating against a mercury barometer; calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer is allowed as an alternative to calibrating against a mercury-in-glass thermometer; rechecking temperature sensors for the filter holder and metering system after each test is allowed in place of having sensors calibrated within 3 °F; the option to check the probe heater calibration after a test at a single point using a reference thermometer is added; the use of weather station barometric pressure corrected to testing point elevation is added as an option to having an on-site barometer; a single acetone blank per container is allowed in place of a blank from each wash bottle; Section 10.3.3 is clarified as a post-test metering system calibration check rather than a metering system calibration, and an alternative metering check procedure is added; the use of filter holder supports or frits made of Teflon is allowed without having to first obtain the Administrator's approval; and Reference 13 for post-test calibration is added to the method.

Z. Method 5A of Appendix A–3 of Part 60

In Method 5A, mercury-free thermometers are allowed as an alternative to mercury-in-glass thermometers.

AA. Method 5E of Appendix A–3 of Part 60

In Method 5E, the requirement to use the Rosemount Model 2100A total organic content analyzer is replaced with the Tekmar-Dohrmann or equivalent analyzer. In Section 12.5, the equation for total particulate concentration is correctly labeled as Eq. 5E–5.

BB. Method 5H of Appendix A–3 of Part 60

In Method 5H, Section 12.1 is revised to add missing terms C_i, C_o, Q_i, and Q_o; and procedures for the determination of an alternative tracer gas flow rate are added.

CC. Method 6 of Appendix A–4 of Part 60

In Method 6, calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer is allowed as an alternative to using a mercury-in-glass thermometer, and calibrating a barometer against a NIST-traceable barometer is allowed as an alternative to calibrating against a mercury barometer.

DD. Method 6C of Appendix A–4 of Part 60

In Section 4.0 of Method 6C, an incorrect reference to Section 4.1 of Method 6 is corrected to reference Section 4.0 of Method 7E. Provisions that were removed from the original method that addressed potential quenching effects in fluorescence analyzers are added to the method.

EE. Method 7 of Appendix A–4 of Part 60

In Method 7, procedures are added to avoid biasing the results when sampling under conditions of high SO_2 concentrations; calibrating a barometer against a NIST-traceable barometer is added as an alternative to calibrating against a mercury barometer; and calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer is an acceptable alternative to using a mercury-in-glass thermometer.

FF. Method 7A of Appendix A–4 of Part 60

In Method 7A, new procedures are added to avoid biasing the results when sampling under conditions of high SO_2 concentrations, and calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer is added as an acceptable alternative to using a mercury-in-glass thermometer.

GG. Method 7E of Appendix A–4 of Part 60

In Method 7E, the instructions for choosing the high-level calibration gas are clarified. Instructions are added to minimize contact of the sample with any condensate to reduce the chance of sample loss, and an error in the traverse point locations used to determine stratification across large stacks is corrected. The basis of a stable response for measurements in the system response time determination is revised in Section 8.2.5 to conform with Section 8.2.6. Alternative sampling bags made of materials other than Tedlar are allowed if the materials are applicable for retaining the compounds of interest.

HH. Method 8 of Appendix A–4 of Part 60

In Method 8, an error in the definition of V_{soln} is corrected. Figure 8–1 is clarified to identify which impingers collect sulfuric acid/sulfur trioxide and which collect SO_2.

II. Method 10 of Appendix A–4 of Part 60

Method 10 is revised to allow the use of sample tanks as an alternative to flexible bags for sample collection.

JJ. Methods 10A and 10B of Appendix A–4 of Part 60

In Methods 10A and 10B, sampling bags made of materials other than Tedlar are allowed if the materials have the sample retaining qualities of Tedlar.

KK. Method 11 of Appendix A–5 of Part 60

Method 11 is revised to address sample breakthrough at high concentrations by using an additional collection impinger. Calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer is an acceptable alternative to using a mercury-in-glass thermometer.

LL. Method 12 of Appendix A–5 of Part 60

Method 12 is revised to allow for analysis by inductively coupled plasma-atomic emission spectrometry (ICP–AES) and cold vapor atomic fluorescence spectrometry (CVAFS) as alternatives to atomic absorption (AA) analysis.

MM. Method 14A of Appendix A–5 of Part 60

In Section 10.1.1 of Method 14A, an incorrect reference to Figure 5–6 is corrected to reference Figure 5–5.

NN. Method 16A of Appendix A–6 of Part 60

In Method 16A, the applicability section notes that method results may be biased low if used at sources other than kraft pulp mills where stack oxygen levels may be lower.

OO. Method 16C of Appendix A–6 of Part 60

In Method 16C, errors in the nomenclature and the equation for calculating the total reduced sulfur concentration are corrected.

PP. Method 18 of Appendix A–6 of Part 60

In Method 18, sampling bags made of materials other than Tedlar are allowed if the materials are applicable for retaining the compounds of interest.

QQ. Method 23 of Appendix A–7 of Part 60

In Method 23, the requirement in Section 2.2.7 that silica gel be stored in metal containers has been deleted. Section 4.2.7 is clarified to note that the used silica gel should be transferred to its original container or other suitable vessel if moisture is being determined or discarded if not needed. Mercury-free thermometers are allowed as alternatives to mercury-in-glass thermometers. Section 8.0, which was inadvertently removed in a previous rulemaking, has been added.

RR. Method 24 of Appendix A–7 of Part 60

In Method 24, ASTM Method D2369 is cited without referencing specific sections to preclude confusion if the method sections are revised in the future.

SS. Method 25 of Appendix A–7 of Part 60

In Method 25, more detailed information is given to describe the filters used for sample collection.

TT. Method 25C of Appendix A–7 of Part 60

Method 25C is revised to allow sampling lines made of Teflon. Probes that have closed points and are driven below the surface in a single step and withdrawn a distance to create a gas gap are allowed as acceptable substitutes to pilot probes and the auger procedure.

UU. Method 25D of Appendix A–7 of Part 60

In Method 25D, errors in cross-references within the method are corrected.

VV. Method 26 of Appendix A–8 of Part 60

Method 26 is revised to allow the use of heated Teflon probes in place of glass-lined probes. Conflicting temperature requirements for the sampling system are clarified, and the note to keep the probe and filter temperature at least 20 °C above the source temperature is removed. The location of the thermocouple that monitors the collected gas temperature is clarified as being as close to the filter holder as practicable instead of in the gas stream. Method 26A is allowed as an acceptable alternative when Method 26 is required.

WW. Method 26A of Appendix A–8 of Part 60

Method 26A is revised to clearly state that the temperature of the probe and filter must be maintained between 120 and 134 °C.

XX. Method 29 of Appendix A–8 of Part 60

Method 29 is revised to allow sample analysis by CVAFS as an alternative to AA analysis.

YY. Method 30B of Appendix A–8 of Part 60

In Method 30B, calibrating a barometer against a NIST-traceable barometer is allowed as an alternative to calibrating against a mercury barometer. Table 9–1 and the method text are revised to amend the quality assurance/quality control criteria for sorbent trap section 2 breakthrough and sample analysis to address compliance testing and relative accuracy testing of mercury monitoring systems currently being conducted at much lower emission concentrations. The method is revised to include the most up-to-date citation for determining the method detection limit.

ZZ. Performance Specification 3 of Appendix B of Part 60

In Performance Specification 3, a statement that was inadvertently removed that allows the relative accuracy to be within 20 percent of the reference method mean value is added to establish the original intent of the rule.

AAA. Performance Specification 4 of Appendix B of Part 60

Performance Specification 4 is revised to remove the interference trap specified in Method 10 when evaluating non-dispersive infrared continuous emission monitoring systems against Method 10.

BBB. Performance Specification 4B of Appendix B of Part 60

Performance Specification 4B is clarified to note that Equation 1 in Section 7.1.1 for calculating calibration error only applies to the carbon monoxide monitor and not the oxygen monitor. It is noted for the oxygen monitor that the calibration error should be expressed as the oxygen concentration difference between the mean monitor and reference value at three levels.

CCC. Performance Specification 7 of Appendix B of Part 60

Performance Specification 7 is revised to allow Methods 15 and 16 as reference methods in addition to Method 11.

DDD. Performance Specification 11 of Appendix B of Part 60

In Performance Specification 11, errors in the denominators of Equations 11–1 and 11–2 are corrected.

EEE. Performance Specification 12B of Appendix B of Part 60

In Performance Specification 12B, allowance is made for using a single good trap when one is lost, broken or damaged. More flexibility is also allowed in meeting the stack flow-to-sample flow ratio.

FFF. Performance Specification 15 of Appendix B of Part 60

In Performance Specification 15, the general references to 40 CFR part 60, Appendix B, for the relative accuracy analysis procedure are revised to specifically cite Performance Specification 2 of 40 CFR part 60, Appendix B.

GGG. Performance Specification 16 of Appendix B of Part 60

Performance Specification 16 is revised to clarify the retesting of a predictive emission monitoring system (PEMS) after a sensor is replaced. Relative accuracy testing at three load or production rate levels is allowed in cases where the key operating parameter is not readily alterable. Additional instruction is added for performing the relative accuracy audit (RAA). An error in the RAA acceptance criterion is corrected, and an alternative acceptance criterion for low concentration measurements is added. The yearly relative accuracy test audit clearly notes that the statistical tests in Section 8.3 are not required for this test. An incorrect reference to Equation 16–4 in Section 12.4 is corrected.

HHH. Procedure 1 of Appendix F of Part 60

In Procedure 1, the relevant performance specification would be cited for the RAA calculation instead of using the current Equation 1–1, which is not appropriate for all pollutants.

III. Procedure 2 of Appendix F of Part 60

In Procedure 2, Equations 2–2 and 2–3 are revised to have the full-scale value in the denominator, which is more appropriate than the up-scale check value. The denominator of equation 2–4 is revised to include the volume of the reference device rather than the full-scale value.

JJJ. Procedure 5 of Appendix F of Part 60

In Procedure 5, the second section listed as Section 6.2.6 is correctly numbered as Section 6.2.7.

KKK. General Provisions (Subpart A) Part 61

In the General Provisions of part 61, Methods 3A and 19 are added to the list of methods not requiring the use of audit samples in Section 61.13(e).

LLL. Beryllium (Subpart C) Part 61

In the Beryllium National Emission Standards for Hazardous Air Pollutants (NESHAP), Method 29 of part 60 is added as an acceptable alternative to Method 104 in Section 61.33(a) for emissions testing.

MMM. Beryllium Rocket Motor Firing (Subpart D) Part 61

In the beryllium rocket motor firing NESHAP, a conversion error in the emission standard in Section 61.42(a) is corrected.

NNN. Mercury (Subpart E) Part 61

In the mercury NESHAP, Method 29 of part 60 is added as an acceptable alternative to Method 101A in Section 61.53(d)(2) for emissions testing.

OOO. Inorganic Arsenic Emissions From Glass Manufacturing Plants (Subpart N) Part 61

In the glass manufacturing plants NESHAP, Method 29 in Appendix A of part 60 is added as an acceptable alternative to Method 108 in Section 61.164(d)(2)(i) for determining the arsenic emissions rate and in Section 61.164(e)(1)(i) and (e)(2) for determining

the arsenic concentration in a gas stream.

PPP. Method 101 of Appendix B of Part 61

Method 101 is revised to allow analysis by ICP–AES or CVAFS as alternatives to AA analysis.

QQQ. Method 101A of Appendix B of Part 61

Method 101A is revised to allow analysis by ICP–AES or CVAFS as alternatives to AA analysis.

RRR. Method 102 of Appendix B of Part 61

In Method 102, mercury-free thermometers are allowed in place of mercury-in-glass thermometers.

SSS. Method 104 of Appendix B of Part 61

Method 104 is revised to allow analysis by ICP–AES and CVAFS as alternatives to AA analysis. A new alternative procedures section is added to address ICP–AES.

TTT. Methods 108 and 108A of Appendix B of Part 61

Methods 108 and 108A are revised to allow analysis by ICP–AES as an alternative to AA analysis. A new alternative procedures section is added to address ICP–AES.

UUU. General Provisions (Subpart A) Part 63

In the General Provisions of part 63, Methods 3A and 19 are added to the list of methods not requiring the use of audit samples in Section 63.7(c). In Section 63.8(f)(6)(iii), an incorrect reference to a section of Performance Specification 2 is corrected. Section 63.14 is revised to arrange the materials that are incorporated by reference in alpha-numeric order.

VVV. Synthetic Organic Chemical Manufacturing Industry (Subpart G) Part 63

Subpart G is revised to allow the use of Method 316 or Method 8260B in the SW–846 Compendium of Methods to determine hazardous air pollutant concentrations in wastewater streams in Section 63.144(b)(5)(i).

WWW. Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (Subpart N) Part 63

South Coast Air Quality Management District Method 205.1 is added as a testing option for measuring total chromium.

XXX. Ethylene Oxide Emissions Standards for Sterilization Facilities (Subpart O) Part 63

The ethylene oxide emissions standard for sterilization facilities is revised to allow California Air Resources Board (CARB) Method 431 as an alternative to the procedures in Section 63.365(b) for determining the efficiency at the sterilization chamber vent. An error in a reference to a section in Performance Specification 8 is also corrected.

YYY. Marine Tank Vessel Loading Operations (Subpart Y) Part 63

The marine tank vessel loading operations emissions standard is revised to allow Method 25B as an alternative to Method 25A in Section 63.565(d)(5) for determining the average VOC concentration upstream and downstream of recovery devices. Method 25B is allowed as an alternative to Methods 25 and 25A for determining the percent reduction in VOC in Section 63.565(d)(8), and the requirement that Method 25B be validated according to Method 301 in Section 63.565(d)(10) is added. Method 25B is also added as an alternative to Method 25A in determining the baseline outlet VOC concentration in Section 63.565(g).

ZZZ. Aerospace Manufacturing and Rework Facilities (Subpart GG) Part 63

The aerospace manufacturing and rework facilities emissions standard is revised to remove an incorrect reference to the location of Method 319 in Section 63.750(o).

AAAA. Pharmaceuticals Production (Subpart GGG) Part 63

The pharmaceuticals production emissions standard is revised to allow Method 320 as an alternative to Method 18 for demonstrating that a vent is not a process vent.

BBBB. Secondary Aluminum Production (Subpart RRR) Part 63

The secondary aluminum production emissions standard is revised to allow Method 26 as an alternative to Method 26A in Section 63.1511(c)(9) for determining hydrochloric acid (HCl) concentration.

CCCC. Manufacturing of Nutritional Yeast (Subpart CCCC) Part 63

Table 2 in the manufacturing of nutritional yeast emissions standard is revised to delete the requirement to use Methods 1, 2, 3, and 4 when measuring VOC by Method 25A.

DDDD. Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (Subpart UUUU) Part 63

Table 4 in the petroleum refineries emissions standard is revised to allow Method 320 as an alternative to Method 18 for determining control device efficiency for organic compounds.

EEEE. Stationary Reciprocating Internal Combustion Engines (Subpart ZZZZ) Part 63

Table 4 in the stationary reciprocating internal combustion engines emissions standard is revised to clarify that a heated probe is not necessary when using ASTM D6522 to measure oxygen or carbon dioxide concentrations. The requirement to use Method 1 or 1A for sampling site and sampling point selection in testing gaseous emissions from engines with smaller ducts is deleted, and single- or three-point sampling, depending on duct size, is added.

FFFF. Method 306 of Appendix A of Part 63

Method 306 is revised to remove references to two figures that do not exist and to clarify the conditions under which ICP is appropriate for sample analysis. Alternative mercury-free thermometers are allowed as alternatives to mercury-in-glass thermometers.

GGGG. Method 306A of Appendix A of Part 63

In Method 306A, information is added to clarify the conditions under which sample filtering is required.

HHHH. Methods 308, 315, and 316 of Appendix A of Part 63

In Methods 308, 315, and 316, calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer is added as an alternative to mercury-in-glass thermometers. Alternative mercury-free thermometers are allowed as alternatives to mercury-in-glass thermometers.

IIII. Method 321 of Appendix A of Part 63

In Method 321, the term for dilution factor in the calculations is clarified.

IV. Public Comments on the Proposed Amendments

Thirty-eight comment letters were received on the proposed rule. The public comments and the agency's responses are summarized in the Summary of Comments and Responses Document that has been added to the

docket that is accessible at the address given in the **ADDRESSES** section of this preamble.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 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). It does not involve the expenditure of $100 million in a year and does not raise significant issues. This final rule amends current testing regulations by removing errors and obsolete provisions and adding approved alternative procedures.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This final rule does not add information collection requirements beyond those currently required under the applicable regulations. This final rule amends current testing regulations by removing errors and obsolete provisions and adding approved alternative procedures.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule 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 since it only corrects and updates current requirements and adds new testing options.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The alternative procedure being added will give small entities more flexibility in choosing testing procedures in applicable situations.

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 final rule corrects and updates current testing requirements. 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). This final rule corrects and updates testing provisions that are already currently mandated. It does not add any new requirements and does not affect pollutant emissions or air quality. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule 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 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. The 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 (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this 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 final rule does not relax the control measures on sources regulated by the rule and,

therefore, will not cause emissions increases from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on February 27, 2014.

List of Subjects

40 CFR Parts 51 and 61

Air pollution control, Environmental protection, Performance specifications, and Test methods and procedures.

40 CFR Parts 60 and 63

Air pollution control, Environmental protection, Incorporation by reference, Performance specifications, and Test methods and procedures.

Dated: January 28, 2014.

Gina McCarthy,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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

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

■ 2. Amend appendix M to part 51 as follows:
■ a. By revising section 4.0.a.
■ b. By amending Method 201A as follows:
■ i. By revising section 7.2.1.
■ ii. By revising paragraph 8.3.4(b).
■ iii. By revising section 8.3.4.1.
■ iv. By revising section 8.7.2.2.
■ v. By revising paragraph 8.7.5.5(a).
■ vi. By revising the introductory text of section 10.1.
■ vii. By removing section 10.5.
■ viii. By revising section 11.2.1.
■ ix. By removing the term ''Vb'' and its definition from section 12.1.
■ x. By revising Equations 8 and 9 in section 12.5.
■ c. By amending Method 202 as follows:
■ i. By revising sections 7.2.1 and 7.2.2.
■ ii. By revising section 8.5.1.
■ iii. By revising section 8.5.3.1.
■ iv. By revising sections 11.2.1 and 11.2.2.
■ vi. By revising Figures 2, 3, 4, 5, and 6 in section 18.0.

Appendix M to Part 51—Recommended Test Methods for State Implementation Plans

* * * * *

4.0. * * *

a. The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes. No audit samples are required for the following test methods: Methods 3A and 3C of appendix A–3 of part 60, Methods 6C, 7E, 9, and 10 of appendix A–4 of part 60, Methods 18 and 19 of appendix A–6 of part 60, Methods 20, 22, and 25A of appendix A–7 of part 60, and Methods 303, 318, 320, and 321 of appendix A of part 63 of this chapter. If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test. The compliance authority responsible for the compliance test may waive the requirement to include an audit sample if they believe that an audit sample is not necessary. ''Commercially available'' means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, *http://www.epa.gov/ttn/emc,* to confirm whether there is a source that can supply an audit sample for that method. If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test. When ordering an audit sample, the source owner, operator, or representative shall give the sample provider an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the compliance authority. The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the compliance authority and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the compliance authority first and report to the AASP. If the method being audited is a method that allows the samples to be analyzed in the field, and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the compliance authority is present at the testing site. The tester may request and the compliance authority may grant a waiver to the requirement that a representative of the compliance authority must be present at the testing site during the field analysis of an audit sample. The source owner, operator, or representative may report the results of the audit sample to the compliance authority and then report the results of the audit sample to the AASP prior to collecting any emission samples. The test protocol and final test report shall document whether an audit sample was ordered and utilized and the pass/fail results as applicable.

* * * * *

Method 201A—Determination of PM_{10} and $PM_{2.5}$ Emissions From Stationary Sources (Constant Sampling Rate Procedure)

* * * * *

7.2.1 Acetone. Use acetone that is stored in a glass bottle. Do not use acetone from a metal container because it will likely produce a high residue in the laboratory and field reagent blanks. You must use acetone with blank values less than 1 part per million by weight residue. Analyze acetone blanks prior to field use to confirm low blank values. In no case shall a blank value of greater than 0.0001 percent (1 part per million by weight) of the weight of acetone used in sample recovery be subtracted from the sample weight (*i.e.,* the maximum blank correction is 0.1 mg per 100 g of acetone used to recover samples).

* * * * *

8.3.4 * * *

(b) The appropriate nozzle to maintain the required gas sampling rate for the velocity pressure range and isokinetic range. If the isokinetic range cannot be met (e.g., batch processes, extreme process flow or temperature variation), void the sample or use methods subject to the approval of the Administrator to correct the data. The acceptable variation from isokinetic sampling is 80 to 120 percent and no more than 100 ± 21 percent (2 out of 12 or 5 out of 24) sampling points outside of this criteria.

* * * * *

8.3.4.1 Preliminary traverse. You must use an S-type pitot tube with a conventional thermocouple to conduct the traverse. Conduct the preliminary traverse as close as possible to the anticipated testing time on sources that are subject to hour-by-hour gas flow rate variations of approximately ± 20 percent and/or gas temperature variations of approximately ± 28 °C (± 50 °F). (Note: You should be aware that these variations can cause errors in the cyclone cut diameters and the isokinetic sampling velocities.)

* * * * *

8.7.2.2 Probe blockage factor. You must use Equation 26 to calculate an average probe blockage correction factor (b_f) if the diameter

of your stack or duct is between 25.7 and 36.4 inches for the combined $PM_{2.5}/PM_{10}$ sampling head and pitot and between 18.8 and 26.5 inches for the $PM_{2.5}$ cyclone and pitot. A probe blockage factor is calculated because of the flow blockage caused by the relatively large cross-sectional area of the cyclone sampling head, as discussed in Section 8.3.2.2 and illustrated in Figures 8 and 9 of Section 17. You must determine the cross-sectional area of the cyclone head you use and determine its stack blockage factor. (Note: Commercially-available sampling heads (including the PM_{10} cyclone, $PM_{2.5}$ cyclone, pitot and filter holder) have a projected area of approximately 31.2 square inches when oriented into the gas stream.) As the probe is moved from the outermost to the innermost point, the amount of blockage that actually occurs ranges from approximately 13 square inches to the full 31.2 square inches plus the blockage caused by the probe extension. The average cross-sectional area blocked is 22 square inches.

* * * * *

8.7.5.5 * * *

(a) Container #1, Less than or equal to $PM_{2.5}$ micrometer filterable particulate. Use tweezers and/or clean disposable surgical gloves to remove the filter from the filter holder. Place the filter in the Petri dish that you labeled with the test identification and Container #1. Using a dry brush and/or a sharp-edged blade, carefully transfer any PM and/or filter fibers that adhere to the filter holder gasket or filter support screen to the Petri dish. Seal the container. This container holds particles less than or equal to 2.5 micrometers that are caught on the in-stack filter. (Note: If the test is conducted for PM_{10} only, then Container #1 would be for less than or equal to PM_{10} micrometer filterable particulate.)

* * * * *

10.1 Gas Flow Velocities. You must use an S-type pitot tube that meets the required EPA specifications (EPA Publication 600/4–77–0217b) during these velocity measurements. (Note: If, as specified in Section 8.7.2.3, testing is performed in stacks less than 26.5 inches in diameter, testers may use a standard pitot tube according to the requirements in Method 1 or 2 of appendix A–3 to part 60 of this chapter.) You must also complete the following:

* * * * *

11.2.1 Container #1, Less than or Equal to $PM_{2.5}$ Micrometer Filterable Particulate. Transfer the filter and any loose particulate from the sample container to a tared weighing dish or pan that is inert to solvent or mineral acids. Desiccate for 24 hours in a dessicator containing anhydrous calcium sulfate. Weigh to a constant weight and report the results to the nearest 0.1 mg. (See Section 3.0 for a definition of Constant weight.) If constant weight requirements cannot be met, the filter must be treated as described in Section 11.2.1 of Method 202 of appendix M to this part. Note: The nozzle and front half wash and filter collected at or below 30 °C (85 °F) may not be heated and must be maintained at or below 30 °C (85 °F).

* * * * *

12.5 * * *

For N_{re} Less than 3,162:

$$Q_{IV} = 0.0060639 \left[\frac{\mu}{C^{0.4242}}\right] \left[\frac{P_S M_W}{T_s}\right]^{-0.5759} \left[\frac{1}{D_{50}}\right]^{0.8481} \quad \text{(Eq. 8)}$$

For N_{re} greater than or equal to 3,162:

$$Q_{IV} = 0.07657 \left[\frac{\mu}{C^{0.6205}}\right] \left[\frac{P_S M_W}{T_s}\right]^{-0.3795} \left[\frac{1}{D_{50}}\right]^{1.241} \quad \text{(Eq. 9)}$$

* * * * *

Method 202—Dry Impinger Method for Determining Condensable Particulate Emissions From Stationary Sources

* * * * *

7.2.1 Acetone. Use acetone that is stored in a glass bottle. Do not use acetone from a metal container because it normally produces a high residual mass in the laboratory and field reagent blanks. You must use acetone that has a blank value less than 1.0 ppmw (0.1 mg/100 g) residue.

7.2.2 Hexane, American Chemical Society grade. You must use hexane that has a blank residual mass value less than 1.0 ppmw (0.1 mg/100 g) residue.

* * * * *

8.5.1 Impinger and CPM Filter Assembly.

8.5.1.1 Monitor the moisture condensation in the knockout and backup impingers. If the accumulated water from moisture condensation overwhelms the knockout impinger, i.e., the water level is more than approximately one-half the capacity of the knockout impinger, or if water accumulates in the backup impinger sufficient to cover the impinger insert tip, then you may interrupt the sampling run, recover and weigh the moisture accumulated in the knockout and backup impinger, reassemble and leak check the sampling train, and resume the sampling run. You must purge the water collected during the test interruption as soon as practical following the procedures in Section 8.5.3.

8.5.1.2 You must include the weight or volume of the moisture in your moisture calculation and you must combine the recovered water with the appropriate sample fraction for subsequent CPM analysis.

8.5.1.3 Use the field data sheet for the filterable particulate method to record the CPM filter temperature readings at the beginning of each sample time increment and when sampling is halted. Maintain the CPM filter greater than 20 °C (greater than 65 °F) but less than or equal to 30 °C (less than or equal to 85 °F) during sample collection. (Note: Maintain the temperature of the CPM filter assembly as close to 30 °C (85 °F) as feasible.)

* * * * *

8.5.3.1 If you choose to conduct a pressurized nitrogen purge at the completion of CPM sample collection, you may purge the entire CPM sample collection train from the condenser inlet to the CPM filter holder outlet or you may quantitatively transfer the water collected in the condenser and the water dropout impinger to the backup impinger and purge only the backup impinger and the CPM filter. You must measure the water in the knockout and backup impingers and record the volume or weight as part of the moisture collected during sampling as specified in Section 8.5.3.4.

8.5.3.1.1 If you choose to conduct a purge of the entire CPM sampling train, you must replace the short stem impinger insert in the knock out impinger with a standard modified Greenburg Smith impinger insert.

8.5.3.1.2 If you choose to combine the knockout and backup impinger catch prior to purge, you must purge the backup impinger and CPM filter holder.

8.5.3.1.3 If the tip of the impinger insert does not extend below the water level (including the water transferred from the first impinger if this option was chosen), you must add a measured amount of degassed, deionized ultra-filtered water that contains 1 ppmw (1 mg/L) residual mass or less until the impinger tip is at least 1 centimeter below the surface of the water. You must record the amount of water added to the water dropout impinger (Vp)(see Figure 4 of Section 18) to correct the moisture content of the effluent gas. (Note: Prior to use, water

must be degassed using a nitrogen purge bubbled through the water for at least 15 minutes to remove dissolved oxygen).

8.5.3.1.4 To perform the nitrogen purge using positive pressure nitrogen flow, you must start with no flow of gas through the clean purge line and fittings. Connect the filter outlet to the input of the impinger train and disconnect the vacuum line from the exit of the silica moisture collection impinger (see Figure 3 of Section 18). You may purge only the CPM train by disconnecting the moisture train components if you measure moisture in the field prior to the nitrogen purge. You must increase the nitrogen flow gradually to avoid over-pressurizing the impinger array. You must purge the CPM train at a minimum of 14 liters per minute for at least one hour. At the conclusion of the purge, turn off the nitrogen delivery system.

* * * * *

11.2.1 Container #3, CPM Filter Sample. If the sample was collected by Method 17 or Method 201A with a stack temperature below 30 °C (85 °F), transfer the filter and any loose PM from the sample container to a tared glass weighing dish. (See Section 3.0 for a definition of constant weight.) Desiccate the sample for 24 hours in a desiccator containing anhydrous calcium sulfate. Weigh to a constant weight and report the results to the nearest 0.1 mg. [Note: In-stack filter samples collected at 30 °C (85 °F) may include both filterable insoluble particulate and condensable particulate. The nozzle and front half wash and filter collected at or below 30 °C (85 °F) may not be heated and must be maintained at or below 30 °C (85 °F).]

11.2.2 CPM Container #1, Aqueous Liquid Impinger Contents. Analyze the water soluble CPM in Container #1 as described in this section. Place the contents of Container #1 into a separatory funnel. Add approximately 30 ml of hexane to the funnel, mix well, and pour off the upper organic phase. Repeat this procedure twice with 30 ml of hexane each time combining the organic phase from each extraction. Each time, leave a small amount of the organic/hexane phase in the separatory funnel, ensuring that no water is collected in the organic phase. This extraction should yield about 90 ml of organic extract. Combine the organic extract from Container #1 with the organic train rinse in Container #2.

* * * * *

18.0 * * *

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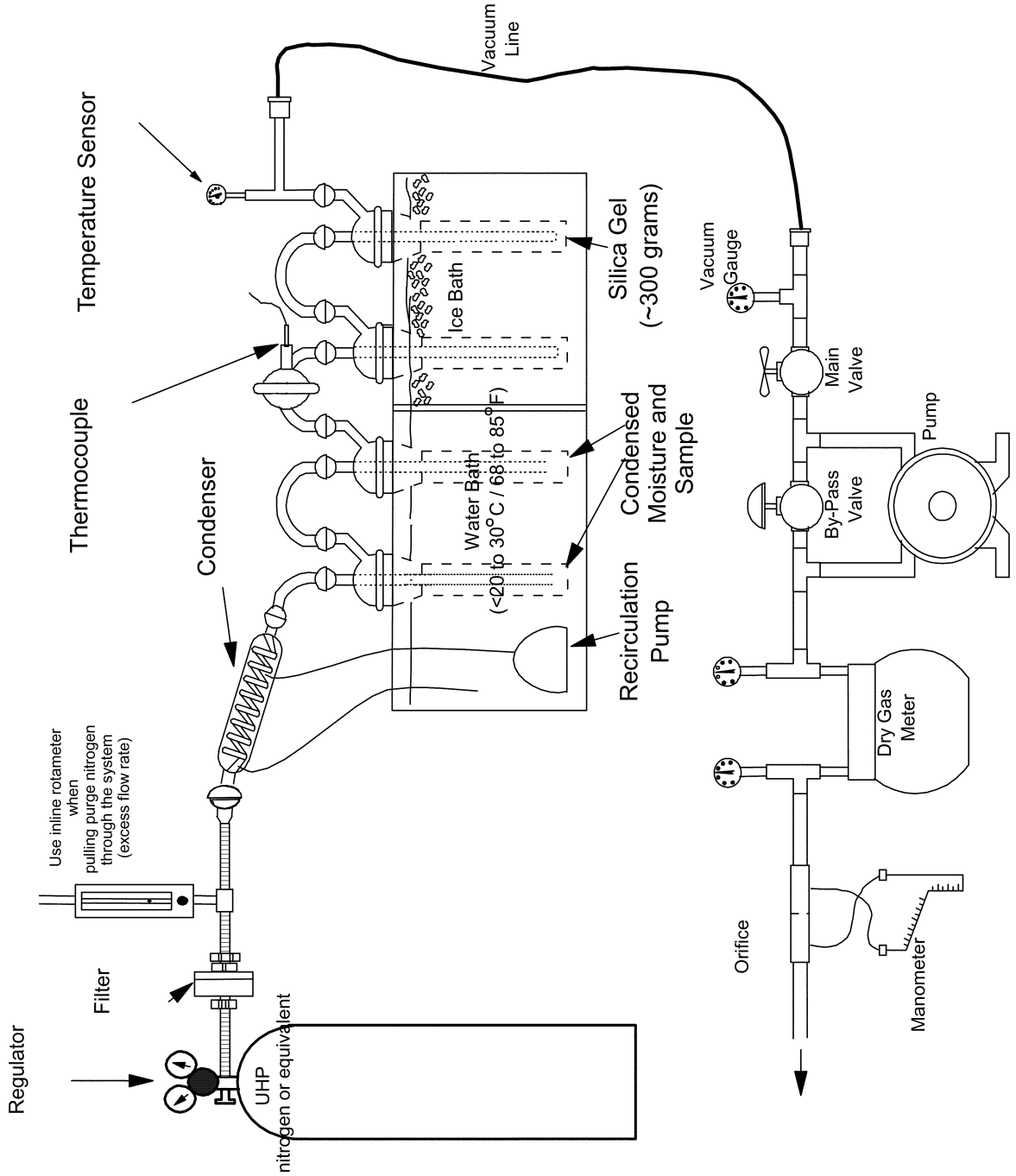

Figure 2. Nitrogen Purge Train Configuration (Vacuum Purge)

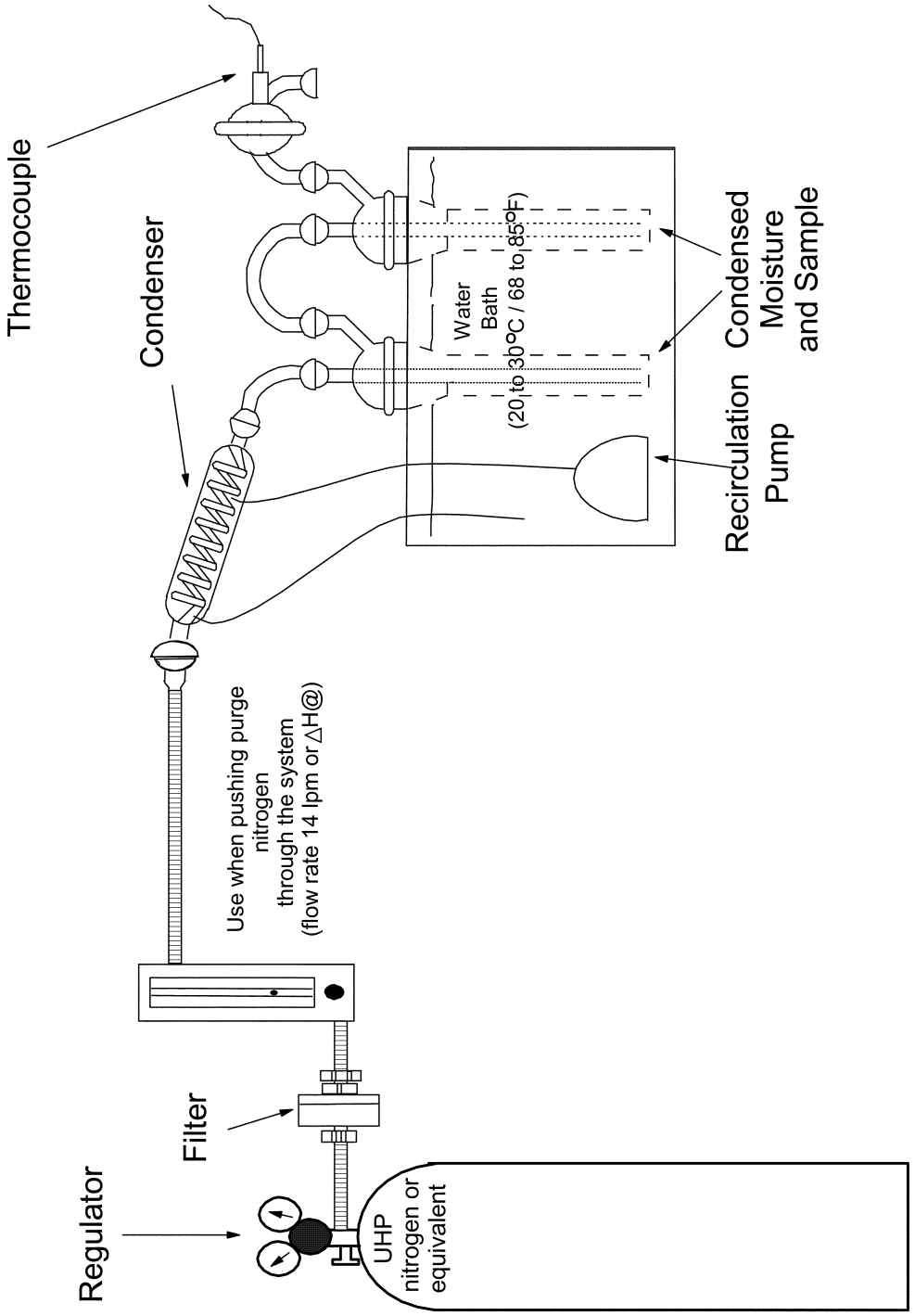

Figure 3. Nitrogen Purge Train Configuration (Pressure Purge)

Field Train Recovery Blank Condensable Particulate Calculations	
Plant	
Date	
Blank No.	
CPM Filter No.	
Water volume added to purge train (V_p)	ml
Field Reagent Blank Mass[a]	
Water (Section 11.2.7)	mg
Acetone (Section 11.2.6)	mg
Hexane (Section 11.2.8)	mg
Field Train Recovery Blank Mass	
Mass of Organic CPM (m_{ob}) (Section 11.2.3)	mg
Mass of Inorganic CPM (m_{ib}) (Equation 3)	mg
Mass of the Field Train Recovery Blank (not to exceed 2.0 mg) (Equation 2)	mg

[a]Field reagent blanks are optional and intended to provide the testing contractor with information they can use to implement corrective actions, if necessary, to reduce the residual mass contribution from reagents used in the field. Field reagent blanks are not used to correct the CPM measurement results.

Figure 4. Field Train Recovery Blank Condensable Particulate Calculations

Other Field Train Sample Condensable Particulate Data	
Plant	
Date	
Run No.	
CPM Filter No.	
Water volume added to purge train (max 50 ml) (V_p)	ml
Date	
Run No.	
CPM Filter No.	
Water volume added to purge train (max 50 ml) (V_p)	ml
Date	
Run No.	
CPM Filter No.	
Water volume added to purge train (max 50 ml) (V_p)	ml

Figure 5. Other Field Train Sample Condensable Particulate Data

Calculations for Recovery of Condensable PM (CPM)		
Plant	_____	
Date	_____	
Run No.	_____	
Sample Preparation - CPM Containers No. 1 and 2 (Section 11.1)		
Was significant volume of water lost during transport? Yes or No	_____	
If Yes, measure the volume received.	_____	
Estimate the volume lost during transport.	_____	ml
Was significant volume of organic rinse lost during transport? Yes or No	_____	
If Yes, measure the volume received.	_____	
Estimate the volume lost during transport.	_____	ml
For Titration		
Normality of NH_4OH (N) (Section 10.2)	_____	N
Volume of titrant (V_t) (Section 11.2.2.2)	_____	ml
Mass of NH_4 added (m_c) (Equation 1)	_____	mg
For CPM Blank Weights		
Inorganic Field Train Recovery Blank Mass (m_{ib}) (Section 9.9)	_____	mg
Organic Field Train Recovery Blank Mass (m_{ob}) (Section 9.9)	_____	mg
Mass of Field Train Recovery Blank (M_{fb}) (max. 2 mg) (Equation 2)	_____	mg
For CPM Train Weights		
Mass of Organic CPM (m_o) (Section 11.2.3)	_____	mg
Mass of Inorganic CPM (m_i) (Equation 3)	_____	mg
Total CPM Mass (m_{cpm}) (Equation 4)	_____	mg

Figure 6. CPM Work Table

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* * * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 3. The authority citation for part 60 continues to read as follows:

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

Subpart A—[Amended]

■ 4. Amend § 60.8 by revising paragraph (g)(1) and adding new paragraphs (h) and (i) to read as follows:

§ 60.8 Performance tests.

* * * * *

(g) * * *

(1) The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes. No audit samples are required for the following test methods: Methods 3A and 3C of appendix A–3 of part 60, Methods 6C, 7E, 9, and 10 of appendix A–4 of part 60, Methods 18 and 19 of appendix A–6 of part 60, Methods 20, 22, and 25A of appendix A–7 of part 60, Methods 30A and 30B of appendix A–8 of part 60, and Methods 303, 318, 320, and 321 of appendix A of part 63 of this chapter. If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test. The compliance authority responsible for the compliance test may waive the requirement to include an audit sample if they believe that an audit sample is not necessary. ''Commercially available'' means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, *www.epa.gov/ttn/emc,* to confirm whether there is a source that can supply an audit sample for that method. If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to

include an audit sample as part of the quality assurance program for the compliance test. When ordering an audit sample, the source owner, operator, or representative shall give the sample provider an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the compliance authority. The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the compliance authority and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the compliance authority first and then report to the AASP. If the method being audited is a method that allows the samples to be analyzed in the field and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the compliance authority is present at the testing site. The tester may request and the compliance authority may grant a waiver to the requirement that a representative of the compliance authority must be present at the testing site during the field analysis of an audit sample. The source owner, operator, or representative may report the results of the audit sample to the compliance authority and report the results of the audit sample to the AASP prior to collecting any emission samples. The test protocol and final test report shall document whether an audit sample was ordered and utilized and the pass/fail results as applicable.

* * * * *

(h) Unless otherwise specified in the applicable subpart, each test location must be verified to be free of cyclonic flow and evaluated for the existence of emission gas stratification and the required number of sampling traverse points. If other procedures are not specified in the applicable subpart to the regulations, use the appropriate procedures in Method 1 to check for cyclonic flow and Method 7E to evaluate emission gas stratification and selection of sampling points.

(i) Whenever the use of multiple calibration gases is required by a test method, performance specification, or quality assurance procedure in a part 60 standard or appendix, Method 205 of 40 CFR part 51, appendix M of this chapter, ''Verification of Gas Dilution Systems for Field Instrument Calibrations,'' may be used.

■ 5. Amend § 60.13 by revising paragraph (d)(1) to read as follows:

§ 60.13 Monitoring requirements.

* * * * *

(d)(1) Owners and operators of a CEMS installed in accordance with the provisions of this part, must check the zero (or low level value between 0 and 20 percent of span value) and span (50 to 100 percent of span value) calibration drifts at least once each operating day in accordance with a written procedure. The zero and span must, at a minimum, be adjusted whenever either the 24-hour zero drift or the 24-hour span drift exceeds two times the limit of the applicable performance specification in appendix B of this part. The system must allow the amount of the excess zero and span drift to be recorded and quantified whenever specified. Owners and operators of a COMS installed in accordance with the provisions of this part must check the zero and upscale (span) calibration drifts at least once daily. For a particular COMS, the acceptable range of zero and upscale calibration materials is defined in the applicable version of PS–1 in appendix B of this part. For a COMS, the optical surfaces, exposed to the effluent gases, must be cleaned before performing the zero and upscale drift adjustments, except for systems using automatic zero adjustments. The optical surfaces must be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity.

* * * * *

■ 6. Revise § 60.17 to read as follows:

§ 60.17 Incorporations by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the EPA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St. SW., Washington, DC, telephone number 202–566, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) American Gas Association, available through ILI Infodisk, 610 Winters Avenue, Paramus, New Jersey 07652:

(1) American Gas Association Report No. 3: Orifice Metering for Natural Gas and Other Related Hydrocarbon Fluids, Part 1: General Equations and Uncertainty Guidelines (1990), IBR approved for § 60.107a(d).

(2) American Gas Association Report No. 3: Orifice Metering for Natural Gas and Other Related Hydrocarbon Fluids, Part 2: Specification and Installation Requirements (2000), IBR approved for § 60.107a(d).

(3) American Gas Association Report No. 11: Measurement of Natural Gas by Coriolis Meter (2003), IBR approved for § 60.107a(d).

(4) American Gas Association Transmission Measurement Committee Report No. 7: Measurement of Gas by Turbine Meters (Revised February 2006), IBR approved for § 60.107a(d).

(c) American Hospital Association (AHA) Service, Inc., Post Office Box 92683, Chicago, Illinois 60675–2683. You may inspect a copy at the EPA's Air and Radiation Docket and Information Center (Docket A–91–61, Item IV–J–124), Room M–1500, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

(1) An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities. American Society for Health Care Environmental Services of the American Hospital Association. Chicago, Illinois. 1993. AHA Catalog No. 057007. ISBN 0–87258–673–5. IBR approved for §§ 60.35e and 60.55c.

(2) [Reserved]

(d) American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005.

(1) API Publication 2517, Evaporation Loss from External Floating Roof Tanks, Second Edition, February 1980, IBR approved for §§ 60.111(i), 60.111a(f), and 60.116b(e).

(2) API Manual of Petroleum Measurement Standards, Chapter 22—Testing Protocol, Section 2—Differential Pressure Flow Measurement Devices, First Edition, August 2005, IBR approved for § 60.107a(d).

(e) American Public Health Association, 1015 18th Street NW., Washington, DC 20036.

(1) ''Standard Methods for the Examination of Water and Wastewater,'' 16th edition, 1985. Method 303F: ''Determination of Mercury by the Cold Vapor Technique.'' Incorporated by reference for appendix A–8 to part 60, Method 29, §§ 9.2.3, 10.3, and 11.1.3.

(2) 2540 G. Total, Fixed, and Volatile Solids in Solid and Semisolid Samples, in Standard Methods for the Examination of Water and Wastewater, 20th Edition, 1998, IBR approved for § 60.154(b).

(f) American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990, Telephone (800) 843–2763, *http://www.asme.org.*

(1) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for §§ 60.58a(h), 60.58b(i), 60.1320(a), and 60.1810(a).

(2) ASME MFC–3M–2004, Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi, IBR approved for § 60.107a(d).

(3) ASME/ANSI MFC–4M–1986 (Reaffirmed 2008), Measurement of Gas Flow by Turbine Meters, IBR approved for § 60.107a(d).

(4) ASME/ANSI MFC–5M–1985 (Reaffirmed 2006), Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters, IBR approved for § 60.107a(d).

(5) ASME MFC–6M–1998 (Reaffirmed 2005), Measurement of Fluid Flow in Pipes Using Vortex Flowmeters, IBR approved for § 60.107a(d).

(6) ASME/ANSI MFC–7M–1987 (Reaffirmed 2006), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles, IBR approved for § 60.107a(d).

(7) ASME/ANSI MFC–9M–1988 (Reaffirmed 2006), Measurement of Liquid Flow in Closed Conduits by Weighing Method, IBR approved for § 60.107a(d).

(8) ASME MFC–11M–2006, Measurement of Fluid Flow by Means of Coriolis Mass Flowmeters, IBR approved for § 60.107a(d).

(9) ASME MFC–14M–2003, Measurement of Fluid Flow Using Small Bore Precision Orifice Meters, IBR approved for § 60.107a(d).

(10) ASME MFC–16–2007, Measurement of Liquid Flow in Closed Conduits with Electromagnetic Flowmeters, IBR approved for § 60.107a(d).

(11) ASME MFC–18M–2001, Measurement of Fluid Flow Using Variable Area Meters, IBR approved for § 60.107a(d).

(12) ASME MFC–22–2007, Measurement of Liquid by Turbine Flowmeters, IBR approved for § 60.107a(d).

(13) ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for §§ 60.46b, 60.58a(h), 60.58b(i), 60.1320(a), and 60.1810(a).

(14) ASME/ANSI PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], (Issued August 31, 1981), IBR approved for §§ 60.56c(b), 60.63(f), 60.106(e), 60.104a(d), (h), (i), and (j), 60.105a(d), (f), and (g), § 60.106a(a), § 60.107a(a), (c), and (d), tables 1 and 3 to subpart EEEE, tables 2 and 4 to subpart FFFF, table 2 to subpart JJJJ, §§ 60.4415(a), 60.2145(s) and (t), 60.2710(s), (t), and (w), 60.2730(q), 60.4900(b), 60.5220(b), tables 1 and 2 to subpart LLLL, tables 2 and 3 to subpart MMMM, §§ 60.5406(c) and 60.5413(b).

(15) ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators, IBR approved for §§ 60.54b(a) and (b), 60.56a, 60.1185(a) and (c), and 60.1675(a) and (c).

(g) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; also available through ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

(1) ASTM A99–76, Standard Specification for Ferromanganese, IBR approved for § 60.261.

(2) ASTM A99–82 (Reapproved 1987), Standard Specification for Ferromanganese, IBR approved for § 60.261.

(3) ASTM A100–69, Standard Specification for Ferrosilicon, IBR approved for § 60.261.

(4) ASTM A100–74, Standard Specification for Ferrosilicon, IBR approved for § 60.261.

(5) ASTM A100–93, Standard Specification for Ferrosilicon, IBR approved for § 60.261.

(6) ASTM A101–73, Standard Specification for Ferrochromium, IBR approved for § 60.261.

(7) ASTM A101–93, Standard Specification for Ferrochromium, IBR approved for § 60.261.

(8) ASTM A482–76, Standard Specification for Ferrochromesilicon, IBR approved for § 60.261.

(9) ASTM A482–93, Standard Specification for Ferrochromesilicon, IBR approved for § 60.261.

(10) ASTM A483–64, Standard Specification for Silicomanganese, IBR approved for § 60.261.

(11) ASTM A483–74 (Reapproved 1988), Standard Specification for Silicomanganese, IBR approved for § 60.261.

(12) ASTM A495–76, Standard Specification for Calcium-Silicon and Calcium Manganese-Silicon, IBR approved for § 60.261.

(13) ASTM A495–94, Standard Specification for Calcium-Silicon and Calcium Manganese-Silicon, IBR approved for § 60.261.

(14) ASTM D86–78, Distillation of Petroleum Products, IBR approved for §§ 60.562–2(d), 60.593(d), 60.593a(d), 60.633(h).

(15) ASTM D86–82, Distillation of Petroleum Products, IBR approved for §§ 60.562–2(d), 60.593(d), 60.593a(d), 60.633(h).

(16) ASTM D86–90, Distillation of Petroleum Products, IBR approved for §§ 60.562–2(d), 60.593(d), 60.593a(d), 60.633(h).

(17) ASTM D86–93, Distillation of Petroleum Products, IBR approved for §§ 60.562–2(d), 60.593(d), 60.593a(d), 60.633(h).

(18) ASTM D86–95, Distillation of Petroleum Products, IBR approved for §§ 60.562–2(d), 60.593(d), 60.593a(d), 60.633(h).

(19) ASTM D86–96, Distillation of Petroleum Products, (Approved April 10, 1996), IBR approved for §§ 60.562–2(d), 60.593(d), 60.593a(d), 60.633(h), and 60.5401(f).

(20) ASTM D129–64, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for §§ 60.106(j) and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(21) ASTM D129–78, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for §§ 60.106(j) and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(22) ASTM D129–95, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for §§ 60.106(j) and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(23) ASTM D129–00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for § 60.335(b).

(24) ASTM D129–00 (Reapproved 2005), Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for § 60.4415(a).

(25) ASTM D240–76, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for §§ 60.46(c), 60.296(b), and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(26) ASTM D240–92, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for §§ 60.46(c), 60.296(b), and appendix A–7: Method 19, Section 12.5.2.2.3.

(27) ASTM D240–02 (Reapproved 2007), Standard Test Method for Heat of Combustion of Liquid Hydrocarbon

Fuels by Bomb Calorimeter, (Approved May 1, 2007), IBR approved for § 60.107a(d).

(28) ASTM D270–65, Standard Method of Sampling Petroleum and Petroleum Products, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.2.1.

(29) ASTM D270–75, Standard Method of Sampling Petroleum and Petroleum Products, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.2.1.

(30) ASTM D323–82, Test Method for Vapor Pressure of Petroleum Products (Reid Method), IBR approved for §§ 60.111(l), 60.111a(g), 60.111b, and 60.116b(f).

(31) ASTM D323–94, Test Method for Vapor Pressure of Petroleum Products (Reid Method), IBR approved for §§ 60.111(l), 60.111a(g), 60.111b, and 60.116b(f).

(32) ASTM D388–77, Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.41, 60.45(f), 60.41Da, 60.41b, 60.41c, and 60.251.

(33) ASTM D388–90, Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.41, 60.45(f), 60.41Da, 60.41b, 60.41c, and 60.251.

(34) ASTM D388–91, Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.41, 60.45(f), 60.41Da, 60.41b, 60.41c, and 60.251.

(35) ASTM D388–95, Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.41, 60.45(f), 60.41Da, 60.41b, 60.41c, and 60.251.

(36) ASTM D388–98a, Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.41, 60.45(f), 60.41Da, 60.41b, 60.41c, and 60.251.

(37) ASTM D388–99 (Reapproved 2004) ε,[1] Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.41, 60.45(f), 60.41Da, 60.41b, 60.41c, and 60.251.

(38) ASTM D396–78, Standard Specification for Fuel Oils, IBR approved for §§ 60.41b, 60.41c, 60.111(b), and 60.111a(b).

(39) ASTM D396–89, Standard Specification for Fuel Oils, IBR approved for §§ 60.41b, 60.41c, 60.111(b), and 60.111a(b).

(40) ASTM D396–90, Standard Specification for Fuel Oils, IBR approved for §§ 60.41b, 60.41c, 60.111(b), and 60.111a(b).

(41) ASTM D396–92, Standard Specification for Fuel Oils, IBR approved for §§ 60.41b, 60.41c, 60.111(b), and 60.111a(b).

(42) ASTM D396–98, Standard Specification for Fuel Oils, IBR approved for §§ 60.41b, 60.41c, 60.111(b), and 60.111a(b).

(43) ASTM D975–78, Standard Specification for Diesel Fuel Oils, IBR approved for §§ 60.111(b) and 60.111a(b).

(44) ASTM D975–96, Standard Specification for Diesel Fuel Oils, IBR approved for §§ 60.111(b) and 60.111a(b).

(45) ASTM D975–98a, Standard Specification for Diesel Fuel Oils, IBR approved for §§ 60.111(b) and 60.111a(b).

(46) ASTM D975–08a, Standard Specification for Diesel Fuel Oils, IBR approved for §§ 60.41b and 60.41c.

(47) ASTM D1072–80, Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.335(b).

(48) ASTM D1072–90 (Reapproved 1994), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.335(b).

(49) ASTM D1072–90 (Reapproved 1999), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.4415(a).

(50) ASTM D1137–53, Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer, IBR approved for § 60.45(f).

(51) ASTM D1137–75, Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer, IBR approved for § 60.45(f).

(52) ASTM D1193–77, Standard Specification for Reagent Water, IBR approved for appendix A–3 to part 60: Method 5, Section 7.1.3; Method 5E, Section 7.2.1; Method 5F, Section 7.2.1; appendix A–4 to part 60: Method 6, Section 7.1.1; Method 7, Section 7.1.1; Method 7C, Section 7.1.1; Method 7D, Section 7.1.1; Method 10A, Section 7.1.1; appendix A–5 to part 60: Method 11, Section 7.1.3; Method 12, Section 7.1.3; Method 13A, Section 7.1.2; appendix A–8 to part 60: Method 26, Section 7.1.2; Method 26A, Section 7.1.2; and Method 29, Section 7.2.2.

(53) ASTM D1193–91, Standard Specification for Reagent Water, IBR approved for appendix A–3 to part 60: Method 5, Section 7.1.3; Method 5E, Section 7.2.1; Method 5F, Section 7.2.1; appendix A–4 to part 60: Method 6, Section 7.1.1; Method 7, Section 7.1.1; Method 7C, Section 7.1.1; Method 7D, Section 7.1.1; Method 10A, Section 7.1.1; appendix A–5 to part 60: Method 11, Section 7.1.3; Method 12, Section 7.1.3; Method 13A, Section 7.1.2; appendix A–8 to part 60: Method 26, Section 7.1.2; Method 26A, Section 7.1.2; and Method 29, Section 7.2.2.

(54) ASTM D1266–87, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for §§ 60.106(j) and 60.335(b).

(55) ASTM D1266–91, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for §§ 60.106(j) and 60.335(b).

(56) ASTM D1266–98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for §§ 60.106(j) and 60.335(b).

(57) ASTM D1266–98 (Reapproved 2003) ε,[1] Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for § 60.4415(a).

(58) ASTM D1475–60 (Reapproved 1980), Standard Test Method for Density of Paint, Varnish Lacquer, and Related Products, IBR approved for § 60.435(d), appendix A–8 to part 60: Method 24, Section 6.1; and Method 24A, Sections 6.5 and 7.1.

(59) ASTM D1475–90, Standard Test Method for Density of Paint, Varnish Lacquer, and Related Products, IBR approved for § 60.435(d), appendix A–8 to part 60: Method 24, Section 6.1; and Method 24A, §§ 6.5 and 7.1.

(60) ASTM D1552–83, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for §§ 60.106(j), 60.335(b), and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(61) ASTM D1552–95, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for §§ 60.106(j), 60.335(b), and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(62) ASTM D1552–01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for §§ 60.106(j), 60.335(b), and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(63) ASTM D1552–03, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for § 60.4415(a).

(64) ASTM D1826–77, Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for §§ 60.45(f), 60.46(c), 60.296(b), and appendix A–7 to part 60: Method 19, Section 12.3.2.4.

(65) ASTM D1826–94, Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for §§ 60.45(f), 60.46(c), 60.296(b), and appendix A–7 to part 60: Method 19, Section 12.3.2.4.

(66) ASTM D1826–94 (Reapproved 2003), Standard Test Method for

Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, (Approved May 10, 2003), IBR approved for § 60.107a(d).

(67) ASTM D1835–87, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for §§ 60.41Da, 60.41b, and 60.41c.

(68) ASTM D1835–91, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for §§ 60.41Da, 60.41b, and 60.41c.

(69) ASTM D1835–97, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for §§ 60.41Da, 60.41b, and 60.41c.

(70) ASTM D1835–03a, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for §§ 60.41Da, 60.41b, and 60.41c.

(71) ASTM D1945–64, Standard Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for § 60.45(f).

(72) ASTM D1945–76, Standard Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for § 60.45(f).

(73) ASTM D1945–91, Standard Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for § 60.45(f).

(74) ASTM D1945–96, Standard Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for § 60.45(f).

(75) ASTM D1945–03 (Reapproved 2010), Standard Method for Analysis of Natural Gas by Gas Chromatography, (Approved January 1, 2010), IBR approved for §§ 60.107a(d) and 60.5413(d).

(76) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.18(f), 60.45(f), 60.564(f), 60.614(e), 60.664(e), and 60.704(d).

(77) ASTM D1946–90 (Reapproved 1994), Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.18(f), 60.45(f), 60.564(f), 60.614(e), 60.664(e), and 60.704(d).

(78) ASTM D1946–90 (Reapproved 2006), Standard Method for Analysis of Reformed Gas by Gas Chromatography, (Approved June 1, 2006), IBR approved for § 60.107a(d).

(79) ASTM D2013–72, Standard Method of Preparing Coal Samples for Analysis, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(80) ASTM D2013–86, Standard Method of Preparing Coal Samples for Analysis, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(81) ASTM D2015–77 (Reapproved 1978), Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter, IBR approved for §§ 60.45(f), 60.46(c), and appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(82) ASTM D2015–96, Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter, IBR approved for §§ 60.45(f), 60.46(c), and appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(83) ASTM D2016–74, Standard Test Methods for Moisture Content of Wood, IBR approved for appendix A–8 to part 60: Method 28, Section 16.1.1.

(84) ASTM D2016–83, Standard Test Methods for Moisture Content of Wood, IBR approved for appendix A–8 to part 60: Method 28, Section 16.1.1.

(85) ASTM D2234–76, Standard Methods for Collection of a Gross Sample of Coal, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.1.

(86) ASTM D2234–96, Standard Methods for Collection of a Gross Sample of Coal, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.1.

(87) ASTM D2234–97b, Standard Methods for Collection of a Gross Sample of Coal, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.1.

(88) ASTM D2234–98, Standard Methods for Collection of a Gross Sample of Coal, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.1.

(89) ASTM D2369–81, Standard Test Method for Volatile Content of Coatings, IBR approved for appendix A–8 to part 60: Method 24, Section 6.2.

(90) ASTM D2369–87, Standard Test Method for Volatile Content of Coatings, IBR approved for appendix A–8 to part 60: Method 24, Section 6.2.

(91) ASTM D2369–90, Standard Test Method for Volatile Content of Coatings, IBR approved for appendix A–8 to part 60: Method 24, Section 6.2.

(92) ASTM D2369–92, Standard Test Method for Volatile Content of Coatings, IBR approved for appendix A–8 to part 60: Method 24, Section 6.2.

(93) ASTM D2369–93, Standard Test Method for Volatile Content of Coatings, IBR approved for appendix A–8 to part 60: Method 24, Section 6.2.

(94) ASTM D2369–95, Standard Test Method for Volatile Content of Coatings, IBR approved for appendix A–8 to part 60: Method 24, Section 6.2.

(95) ASTM D2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved for §§ 60.18(f), 60.485(g), 60.485a(g), 60.564(f), 60.614(e), 60.664(e), and 60.704(d).

(96) ASTM D2382–88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved for §§ 60.18(f), 60.485(g), 60.485a(g), 60.564(f), 60.614(e), 60.664(e), and 60.704(d).

(97) ASTM D2504–67, Noncondensable Gases in C3 and Lighter Hydrocarbon Products by Gas Chromatography, IBR approved for §§ 60.485(g) and 60.485a(g).

(98) ASTM D2504–77, Noncondensable Gases in C3 and Lighter Hydrocarbon Products by Gas Chromatography, IBR approved for §§ 60.485(g) and 60.485a(g).

(99) ASTM D2504–88 (Reapproved 1993), Noncondensable Gases in C3 and Lighter Hydrocarbon Products by Gas Chromatography, IBR approved for §§ 60.485(g) and 60.485a(g).

(100) ASTM D2584–68(Reapproved 1985), Standard Test Method for Ignition Loss of Cured Reinforced Resins, IBR approved for § 60.685(c).

(101) ASTM D2584–94, Standard Test Method for Ignition Loss of Cured Reinforced Resins, IBR approved for § 60.685(c).

(102) ASTM D2597–94 (Reapproved 1999), Standard Test Method for Analysis of Demethanized Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Gas Chromatography, IBR approved for § 60.335(b).

(103) ASTM D2622–87, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry, IBR approved for §§ 60.106(j) and 60.335(b).

(104) ASTM D2622–94, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry, IBR approved for §§ 60.106(j) and 60.335(b).

(105) ASTM D2622–98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry, IBR approved for §§ 60.106(j) and 60.335(b).

(106) ASTM D2622–05, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.4415(a).

(107) ASTM D2879–83Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for §§ 60.111b(f)(3), 60.116b(e), 60.116b(f), 60.485(e), and 60.485a(e).

(108) ASTM D2879–96, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition

Temperature of Liquids by Isoteniscope, IBR approved for §§ 60.111b(f)(3), 60.116b(e), 60.116b(f), 60.485(e), and 60.485a(e).

(109) ASTM D2879–97, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for §§ 60.111b(f)(3), 60.116b(e), 60.116b(f), 60.485(e), and 60.485a(e).

(110) ASTM D2880–78, Standard Specification for Gas Turbine Fuel Oils, IBR approved for §§ 60.111(b), 60.111a(b), and 60.335(d).

(111) ASTM D2880–96, Standard Specification for Gas Turbine Fuel Oils, IBR approved for §§ 60.111(b), 60.111a(b), and 60.335(d).

(112) ASTM D2908–74, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, IBR approved for § 60.564(j).

(113) ASTM D2908–91, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, IBR approved for § 60.564(j).

(114) ASTM D2986–71, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved for appendix A–3 to part 60: Method 5, Section 7.1.1; appendix A–5 to part 60: Method 12, Section 7.1.1; and Method 13A, Section 7.1.1.2.

(115) ASTM D2986–78, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved for appendix A–3 to part 60: Method 5, Section 7.1.1; appendix A–5 to part 60: Method 12, Section 7.1.1; and Method 13A, Section 7.1.1.2.

(116) ASTM D2986–95a, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved for appendix A–3 to part 60: Method 5, Section 7.1.1; appendix A–5 to part 60: Method 12, Section 7.1.1; and Method 13A, Section 7.1.1.2.

(117) ASTM D3173–73, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(118) ASTM D3173–87, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(119) ASTM D3176–74, Standard Method for Ultimate Analysis of Coal and Coke, IBR approved for § 60.45(f)(5)(i) and appendix A–7 to part 60: Method 19, Section 12.3.2.3.

(120) ASTM D3176–89, Standard Method for Ultimate Analysis of Coal and Coke, IBR approved for § 60.45(f)(5)(i) and appendix A–7 to part 60: Method 19, Section 12.3.2.3.

(121) ASTM D3177–75, Standard Test Method for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(122) ASTM D3177–89, Standard Test Method for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(123) ASTM D3178–73 (Reapproved 1979), Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke, IBR approved for § 60.45(f).

(124) ASTM D3178–89, Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke, IBR approved for § 60.45(f).

(125) ASTM D3246–81, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.335(b).

(126) ASTM D3246–92, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.335(b).

(127) ASTM D3246–96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.335(b).

(128) ASTM D3246–05, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.4415(a)(1).

(129) ASTM D3270–73T, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method), IBR approved for appendix A–5 to part 60: Method 13A, Section 16.1.

(130) ASTM D3270–80, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method), IBR approved for appendix A–5 to part 60: Method 13A, Section 16.1.

(131) ASTM D3270–91, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method), IBR approved for appendix A–5 to part 60: Method 13A, Section 16.1.

(132) ASTM D3270–95, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method), IBR approved for appendix A–5 to part 60: Method 13A, Section 16.1.

(133) ASTM D3286–85, Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(134) ASTM D3286–96, Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(135) ASTM D3370–76, Standard Practices for Sampling Water, IBR approved for § 60.564(j).

(136) ASTM D3370–95a, Standard Practices for Sampling Water, IBR approved for § 60.564(j).

(137) ASTM D3588–98 (Reapproved 2003), Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels, (Approved May 10, 2003), IBR approved for §§ 60.107a(d) and 60.5413(d).

(138) ASTM D3699–08, Standard Specification for Kerosine, including Appendix X1, (Approved September 1, 2008), IBR approved for §§ 60.41b and 60.41c.

(139) ASTM D3792–79, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved for appendix A–7 to part 60: Method 24, Section 6.3.

(140) ASTM D3792–91, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved for appendix A–7 to part 60: Method 24, Section 6.3.

(141) ASTM D4017–81, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved for appendix A–7 to part 60: Method 24, Section 6.4.

(142) ASTM D4017–90, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved for appendix A–7 to part 60: Method 24, Section 6.4.

(143) ASTM D4017–96a, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved for appendix A–7 to part 60: Method 24, Section 6.4.

(144) ASTM D4057–81, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(145) ASTM D4057–95, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(146) ASTM D4057–95 (Reapproved 2000), Standard Practice for Manual Sampling of Petroleum and Petroleum Products, IBR approved for § 60.4415(a).

(147) ASTM D4084–82, Standard Test Method for Analysis of Hydrogen

Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 60.334(h).

(148) ASTM D4084–94, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 60.334(h).

(149) ASTM D4084–05, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for §§ 60.4360 and 60.4415(a).

(150) ASTM D4177–95, Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.2.1.

(151) ASTM D4177–95 (Reapproved 2000), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, IBR approved for § 60.4415(a).

(152) ASTM D4239–85, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(153) ASTM D4239–94, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(154) ASTM D4239–97, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(155) ASTM D4294–02, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.335(b).

(156) ASTM D4294–03, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.4415(a).

(157) ASTM D4442–84, Standard Test Methods for Direct Moisture Content Measurement in Wood and Wood-base Materials, IBR approved for appendix A–8 to part 60: Method 28, Section 16.1.1.

(158) ASTM D4442–92, Standard Test Methods for Direct Moisture Content Measurement in Wood and Wood-base Materials, IBR approved for appendix A–8 to part 60: Method 28, Section 16.1.1.

(159) ASTM D4444–92, Standard Test Methods for Use and Calibration of Hand-Held Moisture Meters, IBR approved for appendix A–8 to part 60: Method 28, Section 16.1.1.

(160) ASTM D4457–85 (Reapproved 1991), Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph, IBR approved for appendix A–7 to part 60: Method 24, Section 6.5.

(161) ASTM D4468–85 (Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for §§ 60.335(b) and 60.4415(a).

(162) ASTM D4468–85 (Reapproved 2006), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, (Approved June 1, 2006), IBR approved for § 60.107a(e).

(163) ASTM D4629–02, Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection, IBR approved for §§ 60.49b(e) and 60.335(b).

(164) ASTM D4809–95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for §§ 60.18(f), 60.485(g), 60.485a(g), 60.564(f), 60.614(d), 60.664(e), and 60.704(d).

(165) ASTM D4809–06, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), (Approved December 1, 2006), IBR approved for § 60.107a(d).

(166) ASTM D4810–88 (Reapproved 1999), Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length of Stain Detector Tubes, IBR approved for §§ 60.4360 and 60.4415(a).

(167) ASTM D4891–89 (Reapproved 2006) Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, (Approved June 1, 2006), IBR approved for §§ 60.107a(d) and 60.5413(d).

(168) ASTM D5287–97 (Reapproved 2002), Standard Practice for Automatic Sampling of Gaseous Fuels, IBR approved for § 60.4415(a).

(169) ASTM D5403–93, Standard Test Methods for Volatile Content of Radiation Curable Materials, IBR approved for appendix A–7 to part 60: Method 24, Section 6.6.

(170) ASTM D5453–00, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, IBR approved for § 60.335(b).

(171) ASTM D5453–05, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, IBR approved for § 60.4415(a).

(172) ASTM D5504–01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for §§ 60.334(h) and 60.4360.

(173) ASTM D5504–08, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, (Approved June 15, 2008), IBR approved for §§ 60.107a(e) and 60.5413(d).

(174) ASTM D5762–02, Standard Test Method for Nitrogen in Petroleum and Petroleum Products by Boat-Inlet Chemiluminescence, IBR approved for § 60.335(b).

(175) ASTM D5865–98, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for §§ 60.45(f) and 60.46(c), and appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(176) ASTM D5865–10, Standard Test Method for Gross Calorific Value of Coal and Coke, (Approved January 1, 2010), IBR approved for §§ 60.45(f), 60.46(c), and appendix A–7 to part 60: Method 19, section 12.5.2.1.3.

(177) ASTM D6216–98, Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, IBR approved for appendix B to part 60: Performance Specification 1.

(178) ASTM D6228–98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 60.334(h).

(179) ASTM D6228–98 (Reapproved 2003), Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for §§ 60.4360 and 60.4415.

(180) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, (Approved October 1, 2003), IBR approved for § 60.73a(b), table 7 to subpart IIII, and table 2 to subpart JJJJ.

(181) ASTM D6366–99, Standard Test Method for Total Trace Nitrogen and Its Derivatives in Liquid Aromatic Hydrocarbons by Oxidative Combustion and Electrochemical Detection, IBR approved for § 60.335(b)(9).

(182) ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, (Approved October 1, 2004), IBR approved for § 60.107a(d) and table 2 to subpart JJJJ.

(183) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, IBR approved for § 60.335(a).

(184) ASTM D6522–00 (Reapproved 2005), Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, (Approved October 1, 2005), IBR approved for table 2 to subpart JJJJ, and §§ 60.5413(b) and (d).

(185) ASTM D6667–01, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, IBR approved for § 60.335(b).

(186) ASTM D6667–04, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, IBR approved for § 60.4415(a).

(187) ASTM D6751–11b, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, including Appendices X1 through X3, (Approved July 15, 2011), IBR approved for §§ 60.41b and 60.41c.

(188) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), IBR approved for § 60.56c(b) and appendix B to part 60: Performance Specification 12A, Section 8.6.2.

(189) 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) and 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), 60.5220(b), tables 1 and 2 to subpart LLLL, and tables 2 and 3 to subpart MMMM.

(190) ASTM D7467–10, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20), including Appendices X1 through X3, (Approved August 1, 2010), IBR approved for §§ 60.41b and 60.41c.

(191) ASTM E168–67, General Techniques of Infrared Quantitative Analysis, IBR approved for §§ 60.485a(d), 60.593(b), 60.593a(b), and 60.632(f).

(192) ASTM E168–77, General Techniques of Infrared Quantitative Analysis, IBR approved for §§ 60.485a(d), 60.593(b), 60.593a(b), and 60.632(f).

(193) ASTM E168–92, General Techniques of Infrared Quantitative Analysis, IBR approved for §§ 60.485a(d)(1), 60.593(b)(2), 60.593a(b)(2), 60.632(f), and 60.5400.

(194) ASTM E169–63, General Techniques of Ultraviolet Quantitative Analysis, IBR approved for §§ 60.485a(d), 60.593(b), 60.593a(b), and 60.632(f) .

(195) ASTM E169–77, General Techniques of Ultraviolet Quantitative Analysis, IBR approved for §§ 60.485a(d), 60.593(b), and 60.593a(b), 60.632(f).

(196) ASTM E169–93, General Techniques of Ultraviolet Quantitative Analysis, (Approved May 15, 1993), IBR approved for §§ 60.485a(d), 60.593(b), 60.593a(b), 60.632(f), and 60.5400(f).

(197) ASTM E260–73, General Gas Chromatography Procedures, IBR approved for §§ 60.485a(d), 60.593(b), 60.593a(b), and 60.632(f).

(198) ASTM E260–91, General Gas Chromatography Procedures, (IBR approved for §§ 60.485a(d), 60.593(b), 60.593a(b), and 60.632(f).

(199) ASTM E260–96, General Gas Chromatography Procedures, (Approved April 10, 1996), IBR approved for §§ 60.485a(d), 60.593(b), 60.593a(b), 60.632(f), 60.5400(f), and 60.5406(b).

(200) ASTM E1584–11, Standard Test Method for Assay of Nitric Acid, (Approved August 1, 2011), IBR approved for § 60.73a(c).

(201) ASTM UOP539–97, Refinery Gas Analysis by Gas Chromatography, (Copyright 1997), IBR approved for § 60.107a(d).

(h) Association of Official Analytical Chemists, 1111 North 19th Street, Suite 210, Arlington, VA 22209.

(1) AOAC Method 9, Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), 11th edition, 1970, pp. 11–12, IBR approved for §§ 60.204(b), 60.214(b), 60.224(b), and 60.234(b).

(2) [Reserved]

(i) U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 272–0167, *http://www.epa.gov*.

(1) EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS) Fabric Filter Bag Leak Detection Guidance, September 1997, IBR approved for §§ 60.2145(r), 60.2710(r), 60.4905(b), and 60.5225(b).

(2) [Reserved]

(j) The Gas Processors Association, 6526 East 60th Street, Tulsa, OK 74145; also available through Information Handling Services, 15 Inverness Way East, PO Box 1154, Englewood, CO 80150–1154. You may inspect a copy at the EPA's Air and Radiation Docket and Information Center, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460.

(1) Gas Processors Association Standard 2172–09, Calculation of Gross Heating Value, Relative Density, Compressibility and Theoretical Hydrocarbon Liquid Content for Natural Gas Mixtures for Custody Transfer (2009), IBR approved for § 60.107a(d).

(2) Gas Processors Association Standard 2261–00, Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography (2000), IBR approved for § 60.107a(d).

(3) Gas Processors Association Standard 2377–86, Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes, 1986 Revision, IBR approved for §§ 60.105(b), 60.107a(b), 60.334(h), 60.4360, and 60.4415(a).

(k) International Organization for Standardization (ISO) available through IHS Inc., 15 Inverness Way East, Englewood, CO 80112.

(1) ISO 8178–4: 1996(E), Reciprocating Internal Combustion Engines—Exhaust Emission Measurement—part 4: Test Cycles for Different Engine Applications, IBR approved for § 60.4241(b).

(2) [Reserved]

(l) International Organization for Standardization (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*.

(1) ISO 8316: Measurement of Liquid Flow in Closed Conduits—Method by Collection of the Liquid in a Volumetric Tank (1987–10–01)—First Edition, IBR approved for § 60.107a(d).

(2) [Reserved]

(m) This material is available for purchase from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. You may inspect a copy at the EPA's Air and Radiation Docket and Information Center (Docket A–91–61, Item IV–J–125), Room M–1500, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

(1) OMB Bulletin No. 93–17: Revised Statistical Definitions for Metropolitan Areas. Office of Management and

Budget, June 30, 1993. NTIS No. PB 93–192–664. IBR approved for § 60.31e.

(2) [Reserved]

(n) North American Electric Reliability Corporation, 1325 G Street NW., Suite 600, Washington, DC 20005–3801, *http://www.nerc.com*.

(1) North American Electric Reliability Corporation Reliability Standard EOP–002–3, Capacity and Energy Emergencies, updated November 19, 2012, IBR approved for §§ 60.4211(f) and 60.4243(d). Also available online: *http://www.nerc.com/files/EOP-002-3_1.pdf*.

(2) [Reserved]

(o) Technical Association of the Pulp and Paper Industry (TAPPI), Dunwoody Park, Atlanta, GA 30341.

(1) TAPPI Method T624 os–68, IBR approved for § 60.285(d).

(2) [Reserved]

(p) Underwriter's Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, IL 60062.

(1) UL 103, Sixth Edition revised as of September 3, 1986, Standard for Chimneys, Factory-built, Residential Type and Building Heating Appliance, IBR approved for Appendix A–8 to part 60.

(2) [Reserved]

(q) Water Pollution Control Federation (WPCF), 2626 Pennsylvania Avenue NW., Washington, DC 20037.

(1) Method 209A, Total Residue Dried at 103–105 °C, in Standard Methods for the Examination of Water and Wastewater, 15th Edition, 1980, IBR approved for § 60.683(b).

(2) [Reserved]

(r) West Coast Lumber Inspection Bureau, 6980 SW. Barnes Road, Portland, OR 97223.

(1) West Coast Lumber Standard Grading Rules No. 16, pages 5–21, 90 and 91, September 3, 1970, revised 1984, IBR approved for Appendix A–8 to part 60.

(2) [Reserved]

Subpart Db—[Amended]

■ 7. Amend § 60.46b by revising paragraphs (f)(1)(ii) and (h)(1) and (h)(2) to read as follows:

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

* * * * *

(f) * * *

(1) * * *

(ii) Method 7E of appendix A of this part or Method 320 of appendix A of part 63 shall be used to determine the NO_X concentrations. Method 3A or 3B of appendix A of this part shall be used to determine O_2 concentration.

* * * * *

(h) * * *

(1) Conduct an initial performance test as required under § 60.8 over a minimum of 24 consecutive steam generating unit operating hours at maximum heat input capacity to demonstrate compliance with the NO_X emission standards under § 60.44b using Method 7, 7A, or 7E of appendix A of this part, Method 320 of appendix A of part 63 of this chapter, or other approved reference methods; and

(2) Conduct subsequent performance tests once per calendar year or every 400 hours of operation (whichever comes first) to demonstrate compliance with the NO_X emission standards under § 60.44b over a minimum of 3 consecutive steam generating unit operating hours at maximum heat input capacity using Method 7, 7A, or 7E of appendix A of this part, Method 320 of appendix A of part 63, or other approved reference methods.

* * * * *

■ 8. Amend § 60.47b by revising paragraph (b)(2) to read as follows:

§ 60.47b Emission monitoring for sulfur dioxide.

* * * * *

(b) * * *

(2) Measuring SO_2 according to Method 6B of appendix A of this part at the inlet or outlet to the SO_2 control system. An initial stratification test is required to verify the adequacy of the sampling location for Method 6B of appendix A of this part. The stratification test shall consist of three paired runs of a suitable SO_2 and CO_2 measurement train operated at the candidate location and a second similar train operated according to the procedures in Section 3.2 and the applicable procedures in Section 7 of Performance Specification 2. Method 6B of appendix A of this part, Method 6A of appendix A of this part, or a combination of Methods 6 and 3 or 3B of appendix A of this part or Methods 6C or Method 320 of appendix A of part 63 of this chapter and 3A of appendix A of this part are suitable measurement techniques. If Method 6B of appendix A of this part is used for the second train, sampling time and timer operation may be adjusted for the stratification test as long as an adequate sample volume is collected; however, both sampling trains are to be operated similarly. For the location to be adequate for Method 6B of appendix A of this part, 24-hour tests, the mean of the absolute difference between the three paired runs must be less than 10 percent.

* * * * *

Subpart Ec—[Amended]

■ 9. Amend § 60.51c by revising the definition of ''Medical/infectious waste'' to read as follows:

§ 60.51c Definitions.

* * * * *

Medical/infectious waste means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that are listed in paragraphs (1) through (7) of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in part 261 of this chapter; household waste, as defined in § 261.4(b)(1) of this chapter; ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in § 261.4(a)(1) of this chapter.

(1) Cultures and stocks of infectious agents and associated biologicals, including: Cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

(2) Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

(3) Human blood and blood products including:

(i) Liquid waste human blood;

(ii) Products of blood;

(iii) Items saturated and/or dripping with human blood; or

(iv) Items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

(4) Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and

culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.

(5) Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals.

(6) Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

(7) Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

* * * * *

Subpart H—[Amended]

■ 10. Amend § 60.84 by revising the equation in paragraph (d) to read as follows:

§ 60.84 Emission monitoring.

* * * * *

(d) * * *

$E_s = (C_s S)/[0.265 - (0.0126\ \%O_2) - (A\ \%CO_2)]$

* * * * *

Subpart O—[Amended]

■ 11. Amend § 60.154 by revising the introductory text to paragraph (b)(5) to read as follows:

§ 60.154 Test methods and procedures.

* * * * *

(b) * * *

(5) Samples of the sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends; and ''2540 G. Total, Fixed, and Volatile Solids in Solid and Semisolid Samples, in Standard Methods for the Examination of Water and Wastewater, 20th Edition, 1998'' (incorporated by reference—see § 60.17) shall be used to determine dry sludge content of each sample (total solids residue), except that:

* * * * *

Subpart BB—[Amended]

■ 12. Amend § 60.284 by revising the equation in paragraph (c)(3) to read as follows:

§ 60.284 Monitoring of emissions and operations.

* * * * *

(c) * * *

(3) * * *

$C_{corr} = C_{meas} \times (21 - X)/(21 - Y)$

* * *

* * * * *

Subpart GG—[Amended]

■ 13. Amend § 60.335 by revising the terms P_r and P_o for the equation in paragraph (b)(1) to read as follows:

§ 60.335 Test methods and procedures.

* * * * *

(b) * * *

(1) * * *

P_r = reference combustor inlet absolute pressure at 101.3 kilopascals ambient pressure. Alternatively, you may use 760 mm Hg (29.92 in Hg),

P_o = observed combustor inlet absolute pressure at test, mm Hg. Alternatively, you may use the barometric pressure for the date of the test,

* * * * *

Subpart KK—[Amended]

■ 14. Amend § 60.374 by revising paragraphs (b)(1), (b)(2), and (c)(2) to read as follows:

§ 60.374 Test methods and procedures.

* * * * *

(b) * * *

(1) Method 12 or Method 29 shall be used to determine the lead concentration (C_{Pb}) and, if applicable, the volumetric flow rate (Q_{sda}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(2) When different operations in a three-process operation facility are ducted to separate control devices, the lead emission concentration (C) from the facility shall be determined as follows:

$$C = \left[\sum_{a=1}^{n}\left(C_a Q_{sda}\right)\right] / \sum_{a=1}^{n} Q_{sda}$$

Where:

C = concentration of lead emissions for the entire facility, mg/dscm (gr/dscf).

C_a = concentration of lead emissions from facility ''a'', mg/dscm (gr/dscf).

Q_{sda} = volumetric flow rate of effluent gas from facility ''a'', dscm/hr (dscf/hr).

N = total number of control devices to which separate operations in the facility are ducted.

* * * * *

(c) * * *

(2) Method 12 or Method 29 shall be used to determine the lead concentration (C_{Pb}) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

* * * * *

Subpart LL—[Amended]

■ 15. Amend § 60.382 by revising paragraph (a)(1) to read as follows:

§ 60.382 Standard for particulate matter.

(a) * * *

(1) Contain particulate matter in excess of 0.05 grams per dry standard cubic meter (0.05 g/dscm).

* * * * *

■ 16. Amend § 60.386 by revising paragraph (b)(2) to read as follows:

§ 60.386 Test methods and procedures.

* * * * *

(b) * * *

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity from stack emissions and process fugitive emissions. The observer shall read opacity only when emissions are clearly identified as emanating solely from the affected facility being observed. A single visible emission observer may conduct visible emission observations for up to three fugitive, stack, or vent emission points within a 15-second interval. This option is subject to the following limitations:

(i) No more than three emission points are read concurrently;

(ii) All three emission points must be within a 70° viewing sector or angle in front of the observer such that the proper sun position can be maintained for all three points; and

(iii) If an opacity reading for any one of the three emission points is within 5 percent opacity of the application standard, then the observer must stop taking readings for the other two points and continue reading just that single point.

* * * * *

Subpart UU—[Amended]

■ 17. Amend § 60.472 by revising paragraph (a)(1)(ii) to read as follows:

§ 60.472 Standards for particulate matter.

(a) * * *

(1) * * *

(ii) 0.4 kg/Mg (0.8 lb/ton) of saturated felt or smooth-surfaced roll roofing produced;

* * * * *

Subpart NNN—[Amended]

■ 18. Amend § 60.660 by revising paragraph (c)(4) to read as follows:

§ 60.660 Applicability and designation of affected facility.

* * * * *

(c) * * *

(4) Each affected facility that has a total resource effectiveness (TRE) index value greater than 8.0 is exempt from all provisions of this subpart except for §§ 60.662; 60.664 (e), (f), and (g); and 60.665 (h) and (l).

* * * * *

■ 19. Amend § 60.665 by revising paragraphs (h)(2) and (h)(3) to read as follows:

§ 60.665 Reporting and recordkeeping requirements.

* * * * *

(h) * * *

(2) Any recalculation of the TRE index value performed pursuant to § 60.664(g); and

(3) The results of any performance test performed pursuant to the methods and procedures required by § 60.664(e).

* * * * *

Subpart IIII—[Amended]

■ 20. Revise Table 7 to Subpart IIII of part 60 to read as follows:

As stated in § 60.4213, you must comply with the following requirements for performance tests for stationary CI ICE with a displacement of ≥30 liters per cylinder:

TABLE 7 TO SUBPART IIII OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS FOR STATIONARY CI ICE WITH A DISPLACEMENT OF ≥30 LITERS PER CYLINDER

Each	Complying with the requirement to	You must	Using	According to the following requirements
1. Stationary CI internal combustion engine with a displacement of ≥ 30 liters per cylinder	a. Reduce NO_X emissions by 90 percent or more;	i. Select the sampling port location and number/location of traverse points at the inlet and outlet of the control device;		(a) For NO_X, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, appendix A–1, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, appendix A–4.
		ii. Measure O_2 at the inlet and outlet of the control device;	(1) Method 3, 3A, or 3B of 40 CFR part 60, appendix A–2	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for NO_X concentration.
		iii. If necessary, measure moisture content at the inlet and outlet of the control device; and	(2) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17)	(c) Measurements to determine moisture content must be made at the same time as the measurements for NO_X concentration.
		iv. Measure NO_X at the inlet and outlet of the control device.	(3) Method 7E of 40 CFR part 60, appendix A–4, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17)	(d) NO_X concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

TABLE 7 TO SUBPART IIII OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS FOR STATIONARY CI ICE WITH A DISPLACEMENT OF ≥30 LITERS PER CYLINDER—Continued

Each	Complying with the requirement to	You must	Using	According to the following requirements
	b. Limit the concentration of NO_X in the stationary CI internal combustion engine exhaust.	i. Select the sampling port location and number/location of traverse points at the exhaust of the stationary internal combustion engine;		(a) For NO_X, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, appendix A–1, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, appendix A–4.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(1) Method 3, 3A, or 3B of 40 CFR part 60, appendix A–2	(b) Measurements to determine O_2 concentration must be made at the same time as the measurement for NO_X concentration.
		iii. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(2) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17)	(c) Measurements to determine moisture content must be made at the same time as the measurement for NO_X concentration.
		iv. Measure NO_X at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device.	(3) Method 7E of 40 CFR part 60, Appendix A–4, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17)	(d) NO_X concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
	c. Reduce PM emissions by 60 percent or more	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1	(a) Sampling sites must be located at the inlet and outlet of the control device.
		ii. Measure O_2 at the inlet and outlet of the control device;	(2) Method 3, 3A, or 3B of 40 CFR part 60, appendix A–2	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for PM concentration.
		iii. If necessary, measure moisture content at the inlet and outlet of the control device; and	(3) Method 4 of 40 CFR part 60, appendix A–3	(c) Measurements to determine and moisture content must be made at the same time as the measurements for PM concentration.

TABLE 7 TO SUBPART IIII OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS FOR STATIONARY CI ICE WITH A DISPLACEMENT OF ≥30 LITERS PER CYLINDER—Continued

Each	Complying with the requirement to	You must	Using	According to the following requirements
		iv. Measure PM at the inlet and outlet of the control device.	(4) Method 5 of 40 CFR part 60, appendix A–3	(d) PM concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
	d. Limit the concentration of PM in the stationary CI internal combustion engine exhaust	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B of 40 CFR part 60, appendix A–2	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for PM concentration.
		iii. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(3) Method 4 of 40 CFR part 60, appendix A–3	(c) Measurements to determine moisture content must be made at the same time as the measurements for PM concentration.
		iv. Measure PM at the exhaust of the stationary internal combustion engine.	(4) Method 5 of 40 CFR part 60, appendix A–3.	(d) PM concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

Subpart JJJJ—[Amended]

■ 21. Revise Table 2 to Subpart JJJJ of part 60 to read as follows:

As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load:

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS

For each	Complying with the requirement to	You must	Using	According to the following requirements
1. Stationary SI internal combustion engine demonstrating compliance according to § 60.4244.	a. limit the concentration of NO_X in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for NO_X, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B[b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005)[a e].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for NO_X concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 2C of 40 CFR part 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A, or ASTM Method D 6348–03[e].	(c) Measurements to determine moisture must be made at the same time as the measurement for NO_X concentration.
		v. Measure NO_X at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device.	(5) Method 7E of 40 CFR part 60, appendix A–4, ASTM Method D6522–00 (Reapproved 2005)[a e], Method 320 of 40 CFR part 63, appendix A, or ASTM Method D 6348–03[e].	(d) Results of this test consist of the average of the three 1-hour or longer runs.

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each	Complying with the requirement to	You must	Using	According to the following requirements
	b. limit the concentration of CO in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for CO, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005) [a e].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for CO concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 2C of 40 CFR part 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A, or ASTM Method D 6348–03 [e].	(c) Measurements to determine moisture must be made at the same time as the measurement for CO concentration.
		v. Measure CO at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device.	(5) Method 10 of 40 CFR part 60, appendix A4, ASTM Method D6522–00 (Reapproved 2005) [a e], Method 320 of 40 CFR part 63, appendix A, or ASTM Method D 6348–03 [e].	(d) Results of this test consist of the average of the three 1-hour or longer runs.

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each	Complying with the requirement to	You must	Using	According to the following requirements
	c. limit the concentration of VOC in the stationary SI internal combustion engine exhaust	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for VOC, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter and the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005) [a e].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for VOC concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 2C of 40 CFR part 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A, or ASTM Method D 6348–03 [e].	(c) Measurements to determine moisture must be made at the same time as the measurement for VOC concentration.
		v. Measure VOC at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device.	(5) Methods 25A and 18 of 40 CFR part 60, appendices A–6 and A–7, Method 25A with the use of a methane cutter as described in 40 CFR 1065.265, Method 18 of 40 CFR part 60, appendix A–6 [c d], Method 320 of 40 CFR part 63, appendix A, or ASTM Method D 6348–03 [e].	(d) Results of this test consist of the average of the three 1-hour or longer runs.

[a] Also, you may petition the Administrator for approval to use alternative methods for portable analyzer.

[b] You may use ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses, for measuring the O_2 content of the exhaust gas as an alternative to EPA Method 3B. AMSE PTC 19.10–1981 incorporated by reference, see 40 CFR 60.17

[c] You may use EPA Method 18 of 40 CFR part 60, appendix A–6, provided that you conduct an adequate pre-survey test prior to the emissions test, such as the one described in OTM 11 on EPA's Web site (*http://www.epa.gov/ttn/emc/prelim/otm11.pdf*).

[d] You may use ASTM D6420–99 (2004), Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry as an alternative to EPA Method 18 for measuring total nonmethane organic. ASTM D6420–99(2004) incorporated by reference; see 40 CFR 60.17.

[e] Incorporated by reference; see 40 CFR 60.17.

■ 22. Amend appendix A–1 to part 60 as follows:

■ a. By amending Method 1 as follows:

■ i. By revising Figure 1–1 in section 17.

■ ii. By adding Figure 1–2 to section 17.

■ b. By amending Method 2 as follows:

■ i. By revising section 8.1, the note at the end of 10.1.1, and sections 10.4, 12.6, and 12.7.

■ ii. By removing the definition for Ts(abs) in section 12.1.

■ iii. By adding a definition for Ts(abavg) in alphabetical order to section 12.1.

■ c. By revising Method 2A, sections 10.3 and 12.2.

■ d. By revising Method 2B, section 12.1.

■ e. By revising Method 2D, section 10.4.

Appendix A–1 to Part 60—Test Methods 1 Through 2F

* * * * *

Method 1—Sample and Velocity Traverses From Stationary Sources

* * * * *

17.0 * * *

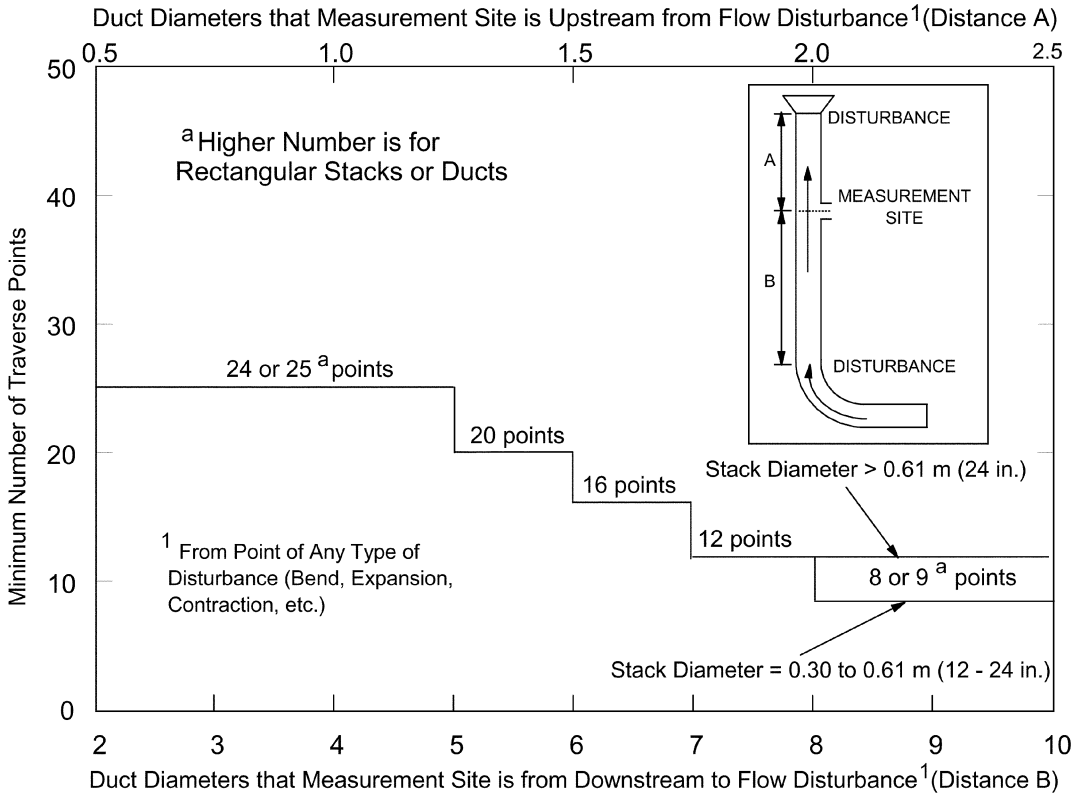

Figure 1-1. Minimum number of traverse points for particulate traverses

* * * * *

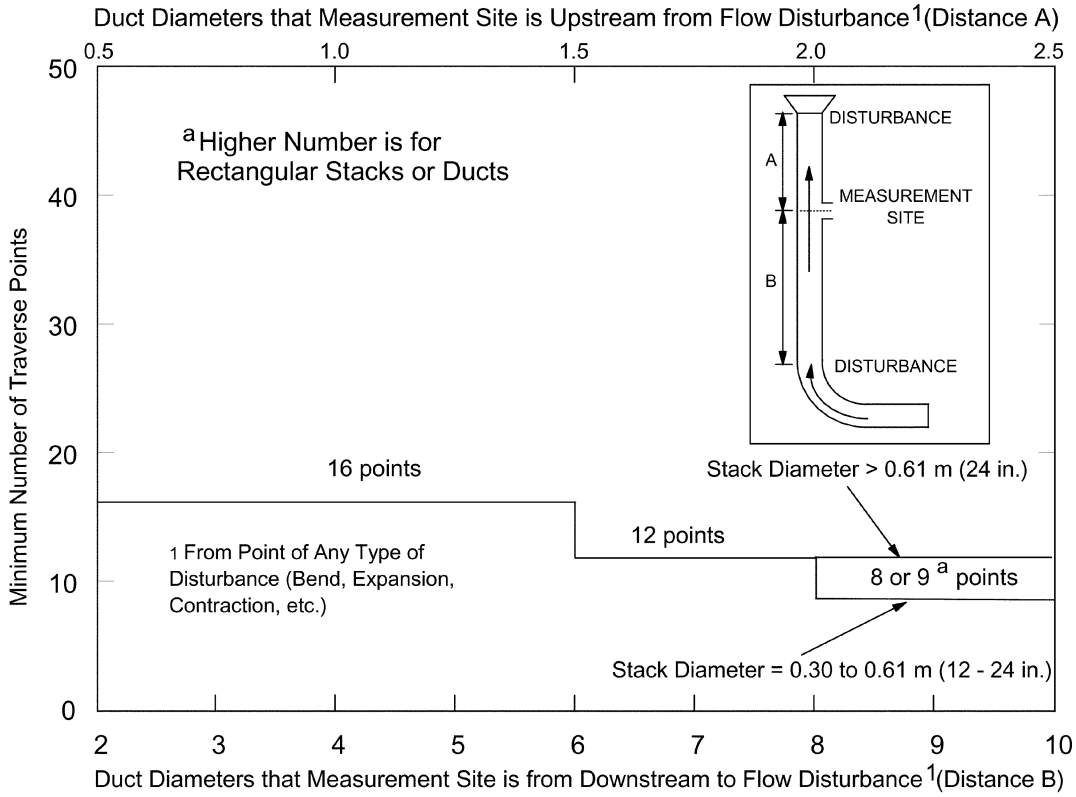

Figure 1-2. Minimum number of traverse points for velocity (nonparticulate) traverses

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Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)

* * * * *

8.1 Set up the apparatus as shown in Figure 2–1. Capillary tubing or surge tanks installed between the manometer and pitot tube may be used to dampen ΔP fluctuations. It is recommended, but not required, that a pretest leak-check be conducted as follows: (1) blow through the pitot impact opening until at least 7.6 cm (3.0 in.) H_2O velocity head registers on the manometer; then, close off the impact opening. The pressure shall remain stable (±2.5 mm H_2O, ±0.10 in. H_2O) for at least 15 seconds; (2) do the same for the static pressure side, except using suction to obtain the minimum of 7.6 cm (3.0 in.) H_2O. Other leak-check procedures, subject to the approval of the Administrator, may be used.

* * * * *

10.1.1 * * *

Note: Do not use a Type S pitot tube assembly that is constructed such that the impact pressure opening plane of the pitot tube is below the entry plane of the nozzle (see Figure 2–7B).

* * * * *

10.4 Barometer. Calibrate the barometer used against a mercury barometer or NIST-traceable barometer prior to each field test.

* * * * *

12.1 Nomenclature

* * * * *

$T_{s(abavg)}$ = Average absolute stack temperature, °K (°R).
= 273 + T_s for metric units,
= 460 + T_s for English units.

* * * * *

12.6 Average Stack Gas Velocity.

$$V_s = K_p\ C_p \left[\frac{\sum_{i=1}^{n} \sqrt{\Delta\ p_i}}{n} \right] \sqrt{\frac{T_{s(abavg)}}{P_s\ \ M_s}} \qquad \text{Eq. 2-7}$$

Where:

$$K_p = 34.97 \frac{m}{\sec} \left[\frac{(g/g-mole)(mm\ Hg)}{(^oK)(mm\ H_2O)} \right]^{1/2} \qquad Metric$$

$$= 85.49 \frac{ft}{\sec} \left[\frac{(lb/lb-mole)(in.\ Hg)}{(^oR)(in.\ H_2O)} \right]^{1/2} \qquad English$$

12.7 Average Stack Gas Dry Volumetric Flow Rate.

$$Q = 3600(1 - B_{ws}) v_s A \left[\frac{T_{std} P_s}{T_{s(abavg)} P_{std}} \right] \quad Eq. 2-8$$

* * * * *

Method 2A—Direct Measurement of Gas Volume Through Pipes and Small Ducts

* * * * *

10.3 Barometer. Calibrate the barometer used against a mercury barometer or NIST-traceable barometer prior to the field test.

* * * * *

12.2 Test Meter Calibration Coefficient.

$$Y_m = \frac{(V_{rf} - V_{ri}) P_b\ T_{m(abs)}}{(V_{mf} - V_{mi})(P_b + P_g) T_{r(abs)}} \qquad \text{Eq. 2A-1}$$

* * * * *

Method 2B—Determination of Exhaust Gas Volume Flow Rate From Gasoline Vapor Incinerators

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12.1 Nomenclature.

CO_e = Mean carbon monoxide concentration in system exhaust, ppm.
$(CO_2)_a$ = Ambient carbon dioxide concentration, ppm (if not measured during the test period, may be assumed to equal 380 ppm).
$(CO_2)_e$ = Mean carbon dioxide concentration in system exhaust, ppm.
HC_e = Mean organic concentration in system exhaust as defined by the calibration gas, ppm.
Hc_i = Mean organic concentration in system inlet as defined by the calibration gas, ppm.
K_e = Hydrocarbon calibration gas factor for the exhaust hydrocarbon analyzer, unitless [equal to the number of carbon atoms per molecule of the gas used to calibrate the analyzer (2 for ethane, 3 for propane, etc.)].
K_i = Hydrocarbon calibration gas factor for the inlet hydrocarbon analyzer, unitless.
V_{es} = Exhaust gas volume, m^3.
V_{is} = Inlet gas volume, m^3.
Q_{es} = Exhaust gas volume flow rate, m^3/min.
Q_{is} = Inlet gas volume flow rate, m^3/min.
θ = Sample run time, min.
S = Standard conditions: 20° C, 760 mm Hg.

* * * * *

Method 2D—Measurement of Gas Volume Flow Rates in Small Pipes and Ducts

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10.4 Barometer. Calibrate the barometer used against a mercury barometer or NIST-traceable barometer prior to the field test.

* * * * *

■ 23. Amend appendix A–2 to part 60 as follows:

■ a. By revising Method 3A, section 7.1.

■ b. By amending Method 3C as follows:

■ i. By revising section 7.1.

■ ii. By adding section 7.3.

Appendix A–2 to Part 60—Test Methods 2G Through 3C

* * * * *

Method 3A—Determination of Oxygen and Carbon Dioxide Concentrations in Emissions From Stationary Sources (Instrumental Analyzer Procedure)

* * * * *

7.1 Calibration Gas. *What calibration gases do I need?* Refer to Section 7.1 of Method 7E for the calibration gas requirements. Example calibration gas mixtures are listed below. Pre-cleaned or scrubbed air may be used for the O_2 high-calibration gas provided it does not contain other gases that interfere with the O_2 measurement.

(a) CO_2 in Nitrogen (N_2).

(b) CO_2/SO_2 gas mixture in N_2.

(c) O_2/SO_2 gas mixture in N_2.

(d) $O_2/CO_2/SO_2$ gas mixture in N_2.

(e) CO_2/NO_X gas mixture in N_2.

(f) $CO_2/SO_2/NO_X$ gas mixture in N_2.

The tests for analyzer calibration error and system bias require high-, mid-, and low-level gases.

* * * * *

Method 3C—Determination of Carbon Dioxide, Methane, Nitrogen, and Oxygen from Stationary Sources

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7.1 Nomenclature.

B_w = Moisture content in the sample, fraction.

C_{N2} = Measured N_2 concentration (by Method 3C), fraction.

C_{N2Corr} = Measured N_2 concentration corrected only for dilution, fraction.

C_t = Calculated NMOC concentration, ppmv C equivalent.

C_{tm} = Measured NMOC concentration, ppmv C equivalent.

P_b = Barometric pressure, mm Hg.

P_t = Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.

P_{tf} = Final gas sample tank pressure after pressurizing, mm Hg absolute.

P_{ti} = Gas sample tank pressure after evacuation, mm Hg absolute.

P_w = Vapor pressure of H_2O (from Table 25C–1), mm Hg.

r = Total number of analyzer injections of sample tank during analysis (where j = injection number, 1 . . . r).

R = Mean calibration response factor for specific sample component, area/ppm.

T_t = Sample tank temperature at completion of sampling, °K.

T_{ti} = Sample tank temperature before sampling, °K.

T_{tf} = Sample tank temperature after pressurizing, °K.

* * * * *

7.3 Measured N_2 Concentration Correction. Calculate the reported N_2 correction for Method 25–C using Eq. 3C–4. If oxygen is determined in place of N_2, substitute the oxygen concentration for the nitrogen concentration in the equation.

$$C_{N_2Corr} = \frac{\frac{P_{tf}}{T_{tf}}}{\frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}}}(C_{N_2}) \quad Eq.\ 3C-4$$

* * * * *

■ 24. Amend appendix A–3 to part 60 as follows:

■ a. By revising Method 4, sections 9.1 and 16.0.

■ b. Amend Method 5 as follows:

■ i. By revising sections 6.1.1.5, 6.1.1.6, 6.1.1.7, 6.1.1.9, 7.1.3, 8.1, 8.3.4, 8.5, 8.5.6, 8.7.3, 8.7.5, 10.3.3, 10.5, 10.6.

■ ii. By removing section 7.1.5.

■ iii. By revising Equation 5–13 in section 16.2.3.3.

■ iv. By adding section 16.3.

■ v. By adding reference 13 to section 17.0.

■ c. By revising Method 5A, section 8.1.

■ d. By amending Method 5E as follows:

■ i. By redesignating sections 16.0 and 17.0 as sections 17.0 and 18.0, respectively.

■ ii. By adding a new section 16.0.

■ e. By amending Method 5H as follows:

■ i. By revising section 12.1.

■ ii. By adding section 12.15.

■ iii. By redesignating sections 16.0 and 17.0 as sections 17.0 and 18.0, respectively.

■ iv. By adding a new section 16.

Appendix A–3 to Part 60—Test Methods 4 Through 5I

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Method 4—Determination of Moisture Content in Stack Gases

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9.1 Miscellaneous Quality Control Measures.

Section	Quality control measure	Effect
Section 8.1.1.4	Leak rate of the sampling system cannot exceed four percent of the average sampling rate or 0.00057 m³/min (0.020 cfm).	Ensures the accuracy of the volume of gas sampled. (Reference Method).
Section 8.2.1	Leak rate of the sampling system cannot exceed two percent of the average sampling rate.	Ensures the accuracy of the volume of gas sampled. (Approximation Method).

* * * * *

16.0 Alternative Procedures

16.1 The procedure described in Method 5 for determining moisture content is an acceptable alternative to Method 4.

16.2 The procedures in Method 6A for determining moisture is an acceptable alternative to Method 4.

16.3 Method 320 is an acceptable alternative to Method 4 for determining moisture.

16.4 Using F-factors to determine moisture is an acceptable alternative to Method 4 for a combustion stack not using a scrubber. If this option is selected, calculate the moisture content as follows:

$B_{WS} - B_H + B_A + B_F$

Where:

B_A = Mole fraction of moisture in the ambient air.

$$= \frac{\%RH}{100\ P_{bar}\left[10^{\left[6.6912-\left(\frac{3144}{T+390.86}\right)\right]}\right]}$$

B_F = Mole fraction of moisture from free water in the fuel.

$$B_F = \left[\frac{0.0036\ W^2 + 0.075\ W}{100}\right]\left[\frac{20.9 - O_2}{20.9}\right]$$

B_H = Mole fraction of moisture from the hydrogen in the fuel.

$$B_H = \left(1 - \frac{F_d}{F_w}\right)\frac{(20.9 - O_2)}{20.9}$$

B_{ws} = Mole fraction of moisture in the stack gas.
F_d = Volume of dry combustion components per unit of heat content at 0 percent oxygen, dscf/10^6 Btu (scm/J). See Table 19–2 in Method 19.
F_W = Volume of wet combustion components per unit of heat content at 0 percent oxygen, wet scf/10^6 Btu (scm/J). See Table 19–2 in Method 19.
%RH = Percent relative humidity (calibrated hydrometer acceptable), percent.
P_{Bar} = Barometric pressure, in. Hg.
T = Ambient temperature, °F.
W = Percent free water by weight, percent.
O_2 = Percent oxygen in stack gas, dry basis, percent.

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Method 5—Determination of Particulate Matter Emissions From Stationary Sources

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6.1.1.5 Filter Holder. Borosilicate glass, with a glass or Teflon frit filter support and a silicone rubber gasket. Other materials of construction (e.g., stainless steel or Viton) may be used, subject to the approval of the Administrator. The holder design shall provide a positive seal against leakage from the outside or around the filter. The holder shall be attached immediately at the outlet of the probe (or cyclone, if used).

6.1.1.6 Filter Heating System. Any heating system capable of monitoring and maintaining temperature around the filter shall be used to ensure the sample gas temperature exiting the filter of 120 ± 14 °C (248 ± 25 °F) during sampling or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application. The monitoring and regulation of the temperature around the filter may be done with the filter temperature sensor or another temperature sensor.

6.1.1.7 Filter Temperature Sensor. A temperature sensor capable of measuring temperature to within ±3 °C (5.4 °F) shall be installed so that the sensing tip of the temperature sensor is in direct contact with the sample gas exiting the filter. The sensing tip of the sensor may be encased in glass, Teflon, or metal and must protrude at least ½ in. into the sample gas exiting the filter. The filter temperature sensor must be monitored and recorded during sampling to ensure a sample gas temperature exiting the filter of 120 ± 14 °C (248 ± 25 °F), or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application.

* * * * *

6.1.1.9 Metering System. Vacuum gauge, leak-free pump, calibrated temperature sensors (rechecked at at least one point after each test), dry gas meter (DGM) capable of measuring volume to within 2 percent, and related equipment, as shown in Figure 5–1. Alternatively, an Isostack metering system may be used if all Method 5 calibrations are performed, with the exception of those related to ΔH@ in Section 9.2.1, wherein the sample flow rate system shall be calibrated in lieu of ΔH@ and shall not deviate by more than 5 percent. Other metering systems capable of maintaining sampling rates within 10 percent of isokinetic and of determining sample volumes to within 2 percent may be used, subject to the approval of the Administrator. When the metering system is used in conjunction with a pitot tube, the system shall allow periodic checks of isokinetic rates.

* * * * *

7.1.3 Water. When analysis of the material caught in the impingers is required, deionized distilled water [to conform to ASTM D1193–77 or 91 Type 3 (incorporated by reference—see § 60.17)] with at least <0.001 percent residue shall be used or as specified in the applicable method requiring analysis of the water. Run reagent blanks prior to field use to eliminate a high blank on test samples.

* * * * *

8.1 Pretest Preparation. It is suggested that sampling equipment be maintained according to the procedures described in APTD–0576. Alternative mercury-free thermometers may be used if the thermometers are at a minimum equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

8.3.4 Set up the train as shown in Figure 5–1 ensuring that the connections are leak-tight. Subject to the approval of the Administrator, a glass cyclone may be used between the probe and filter holder when the total particulate catch is expected to exceed 100 mg or when water droplets are present in the stack gas.

* * * * *

8.5 Sampling Train Operation. During the sampling run, maintain an isokinetic sampling rate (within 10 percent of true isokinetic unless otherwise specified by the Administrator) and a sample gas temperature through the filter of 120 ± 14 °C (248 ± 25 °F) or such other temperature as specified by

an applicable subpart of the standards or approved by the Administrator.

* * * * *

8.5.6 During the test run, make periodic adjustments to keep the temperature around the filter holder at the proper level to maintain the sample gas temperature exiting the filter; add more ice and, if necessary, salt to maintain a temperature of less than 20 °C (68 °F) at the condenser/silica gel outlet. Also, periodically check the level and zero of the manometer.

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8.7.3 Before moving the sample train to the cleanup site, remove the probe from the sample train and cap the open outlet of the probe. Be careful not to lose any condensate that might be present. Cap the filter inlet where the probe was fastened. Remove the umbilical cord from the last impinger, and cap the impinger. If a flexible line is used between the first impinger or condenser and the filter holder, disconnect the line at the filter holder, and let any condensed water or liquid drain into the impingers or condenser. Cap off the filter holder outlet and impinger inlet. Either ground-glass stoppers, plastic caps, or serum caps may be used to close these openings.

* * * * *

8.7.5 Save a portion of the acetone used for cleanup as a blank. From each storage container of acetone used for cleanup, save 200 ml and place in a glass sample container labeled ''acetone blank.'' To minimize any particulate contamination, rinse the wash bottle prior to filling from the tested container.

* * * * *

10.3.3 Acceptable Variation in Calibration Check. If the DGM coefficient values obtained before and after a test series differ by more than 5 percent, the test series shall either be voided, or calculations for the test series shall be performed using whichever meter coefficient value (*i.e.*, before or after) gives the lower value of total sample volume.

* * * * *

10.5 Temperature Sensors. Use the procedure in Section 10.3 of Method 2 to calibrate in-stack temperature sensors. Dial thermometers, such as are used for the DGM and condenser outlet, shall be calibrated against mercury-in-glass thermometers. An alternative mercury-free NIST-traceable thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application. As an alternative, the following single-point calibration procedure may be used. After each test run series, check the accuracy (and, hence, the calibration) of each thermocouple system at ambient temperature, or any other temperature, within the range specified by the manufacturer, using a reference thermometer (either ASTM reference thermometer or a thermometer that has been calibrated against an ASTM reference thermometer). The temperatures of the thermocouple and reference thermometers shall agree to within ±2 °F.

10.6 Barometer. Calibrate against a mercury barometer or NIST-traceable barometer prior to the field test. Alternatively, barometric pressure may be obtained from a weather report that has been adjusted for the test point (on the stack) elevation.

* * * * *

16.2.3.3 * * *

$$V_{cr(std)} = K' \frac{P_{bar}\theta}{\sqrt{T_{amb}}} \qquad \text{Eq. 5-13}$$

* * * * *

16.3 Alternative Post-Test Metering System Calibration. The following procedure may be used as an alternative to the post-test calibration described in Section 10.3.2. This alternative procedure does not detect leakages between the inlet of the metering system and the dry gas meter. Therefore, two steps must be included to make it an equivalent alternative:

(1) The metering system must pass the post-test leak-check from either the inlet of the sampling train or the inlet of the metering system. Therefore, if the train fails the former leak-check, another leak-check from the inlet of the metering system must be conducted;

(2) The metering system must pass the leak-check of that portion of the train from the pump to the orifice meter as described in Section 8.4.1.

16.3.1 After each test run, do the following:

16.3.1.1 Ensure that the metering system has passed the post-test leak-check. If not, conduct a leak-check of the metering system from its inlet.

16.3.1.2 Conduct the leak-check of that portion of the train from the pump to the orifice meter as described in Section 10.3.1.1.

16.3.1.3 Calculate Y_{qa} for each test run using the following equation:

$$Y_{qa} = \frac{\theta}{V_m}\sqrt{\frac{0.0319T_m}{\Delta H@\left(P_{bar} + \frac{\Delta H_{avg}}{13.6}\right)}\left(\frac{29}{M_d}\right)}\left(\sqrt{\Delta H}\right)_{avg} \qquad \text{Eq. 5-15}$$

Where:

Y_{qa} = Dry gas meter calibration check value, dimensionless.

0.0319 = (29.92/528) (0.75)^2 (in. Hg/°R) cfm^2.

ΔH@ = Orifice meter calibration coefficient, in. H_2O.

M_d = Dry molecular weight of stack gas, lb/lb-mole.

29 = Dry molecular weight of air, lb/lb-mole.

16.3.2 After each test run series, do the following:

16.3.2.1 Average the three or more Y_{qa}'s obtained from the test run series and compare this average Y_{qa} with the dry gas meter calibration factor Y. The average Y_{qa} must be within 5 percent of Y.

16.3.2.2 If the average Y_{qa} does not meet the 5 percent criterion, recalibrate the meter over the full range of orifice settings as detailed in Section 10.3.1. Then follow the procedure in Section 10.3.3.

17.0 * * *

13. Shigehara, Roger T., P.G. Royals, and E.W. Steward. ''Alternative Method 5 Post-Test Calibration.'' Entropy Incorporated, Research Triangle Park, NC 27709.

* * * * *

Method 5A—Determination of Particulate Matter Emissions From the Asphalt Processing and Asphalt Roofing Industry

* * * * *

8.1 Pretest Preparation. Unless otherwise specified, maintain and calibrate all components according to the procedure described in APTD–0576, ''Maintenance, Calibration, and Operation of Isokinetic Source-Sampling Equipment'' (Reference 3 in Method 5, Section 17.0). Alternative mercury-free thermometers may be used if the thermometers are, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

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Method 5E—Determination of Particulate Matter Emissions From the Wool Fiberglass Insulation Manufacturing Industry

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16.0 Alternative Procedures

16.1 Total Organic Carbon Analyzer. Tekmar-Dohrmann analyzers using the single injection technique may be used as an alternative to Rosemount Model 2100A analyzers.

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Method 5H—Determination of Particulate Matter Emissions From Wood Heaters From a Stack Location

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12.1 Nomenclature.

A = Sample flow rate adjustment factor.
BR = Dry wood burn rate, kg/hr (lb/hr), from Method 28, Section 8.3.
B_{ws} = Water vapor in the gas stream, proportion by volume.
C_i = Tracer gas concentration at inlet, ppmv.
C_o = Tracer gas concentration at outlet, ppmv.
C_s = Concentration of particulate matter in stack gas, dry basis, corrected to standard conditions, g/dscm (g/dscf).
E = Particulate emission rate, g/hr (lb/hr).
ΔH = Average pressure differential across the orifice meter (see Figure 5H–1), mm H_2O (in. H_2O).
L_a = Maximum acceptable leakage rate for either a post-test leak-check or for a leak-check following a component change; equal to 0.00057 cmm (0.020 cfm) or 4 percent of the average sampling rate, whichever is less.
L_1 = Individual leakage rate observed during the leak-check conducted before a component change, cmm (cfm).
L_p = Leakage rate observed during the post-test leak-check, cmm (cfm).
m_n = Total amount of particulate matter collected, mg.
M_a = Mass of residue of solvent after evaporation, mg.
N_C = Grams of carbon/gram of dry fuel (lb/lb), equal to 0.0425.
N_T = Total dry moles of exhaust gas/kg of dry wood burned, g-moles/kg (lb-moles/lb).
PR = Percent of proportional sampling rate.
P_{bar} = Barometric pressure at the sampling site, mm Hg (in.Hg).
P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in.Hg).
Q_i = Gas volumetric flow rate at inlet, cfm (l/min).
Q_o = Gas volumetric flow rate at outlet, cfm (l/min).

* * * * *

12.15 Alternative Tracer Gas Flow Rate Determination.

$$Q_o = \frac{Q_i \times C_i}{C_o} \qquad Eq.\ 5H-10$$

Note: This gives Q for a single instance only. Repeated multiple determinations are needed to track temporal variations. Very small variations in Q_i, C_i, or C_o may give very large variations in Q_o.

* * * * *

16.0 Alternative Procedures

16.1 Alternative Stack Gas Volumetric Flow Rate Determination (Tracer Gas).

16.1.1 Apparatus.

16.1.1.1 Tracer Gas Injector System. This is to inject a known concentration of tracer gas into the stack. This system consists of a cylinder of tracer gas, a gas cylinder regulator, a stainless steel needle valve or a flow controller, a nonreactive (stainless steel or glass) rotameter, and an injection loop to disperse the tracer gas evenly in the stack.

16.1.1.2 Tracer Gas Probe. A glass or stainless steel sampling probe.

16.1.1.3 Gas Conditioning System. A gas conditioning system is suitable for delivering a cleaned sample to the analyzer consisting of a filter to remove particulate and a condenser capable of lowering the dew point of the sample gas to less than 5 °C (40 °F). A desiccant such as anhydrous calcium sulfate may be used to dry the sample gas. Desiccants which react or absorb tracer gas or stack gas may not be used, e.g. silica gel absorbs CO_2.

16.1.1.4. Pump. An inert (i.e., stainless steel or Teflon head) pump to deliver more than the total sample required by the manufacturer's specifications for the analyzer used to measure the downstream tracer gas concentration.

16.1.1.5 Gas Analyzer. A gas analyzer is any analyzer capable of measuring the tracer gas concentration in the range necessary at least every 10 minutes. A means of controlling the analyzer flow rate and a device for determining proper sample flow rate shall be provided unless data is provided to show that the analyzer is insensitive to flow variations over the range encountered during the test. The gas analyzer needs to meet or exceed the following performance specifications:

Linearity	±1 percent of full scale.
Calibration Error.	≤2 percent of span.
Response Time	≤10 seconds.
Zero Drift (24 hour).	≤2 percent of full scale.
Span Drift (24 hour).	≤2 percent of full scale.
Resolution	≤0.5 percent of span.

16.1.1.6 Recorder (optional). To provide a permanent record of the analyzer output.

16.1.2 Reagents.

16.1.2.1 Tracer Gas. The tracer gas is sulfur hexafluoride in an appropriate concentration for accurate analyzer measurement or pure sulfur dioxide. The gas used must be nonreactive with the stack effluent and give minimal (<3 percent) interference to measurement by the gas analyzer.

16.1.3 Procedure. Select upstream and downstream locations in the stack or duct for introducing the tracer gas and delivering the sampled gas to the analyzer. The inlet location should be 8 or more duct diameters beyond any upstream flow disturbance. The outlet should be 8 or more undisturbed duct diameters from the inlet and 2 or more duct diameters from the duct exit. After installing the apparatus, meter a known concentration of the tracer gas into the stack at the inlet location. Use the gas sample probe and analyzer to show that no stratification of the tracer gas is found in the stack at the measurement locations. Monitor the tracer gas concentration from the outlet location and record the concentration at 10-minute intervals or more often at the option of the tester. A minimum of three measured intervals is recommended to determine the stack gas volumetric flow rate. Other statistical procedures may be applied for complete flow characterization and additional QA/QC.

* * * * *

■ 25. Amend appendix A–4 to part 60 as follows:

■ a. By revising Method 6, sections 10.2 and 10.4.

■ b. By revising Method 6C, sections 4.0 and 8.3.

■ c. By revising Method 7, sections 4.0, 10.2, and 10.3.

■ d. By revising Method 7A, sections 4.0 and 10.4.

■ e. By revising Method 7E, sections 6.1, 7.1.1, the introductory text in section 8.2.5, the introductory text in section 8.2.7, and the introductory text in section 16.2.2.

■ f. By revising Method 8, the definition for V_{soln} in section 12.1, and Figure 8–1 in section 17.0.

■ g. By revising Method 10, sections 6.2.5 and 8.4.2.

■ h. By revising Method 10A, sections 2.0, 8.2.1, 8.2.3, 11.1, 11.2, the introductory text in section 12.3, and 13.5.

■ i. By revising Method 10B, section 2.1, 6.2.3, the introductory text in section 12.2.

Appendix A–4 to Part 60—Test Methods 6 Through 10B

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Method 6—Determination of Sulfur Dioxide Emissions From Stationary Sources

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10.2 Temperature Sensors. Calibrate against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

10.4 Barometer. Calibrate against a mercury barometer or NIST-traceable barometer prior to the field test.

* * * * *

Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

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4.0 Interferences

Refer to Section 4.0 of Method 7E.

* * * * *

8.3 *Interference Check.* You must follow the procedures of Section 8.2.7 of Method 7E

to conduct an interference check, substituting SO_2 for NO_X as the method pollutant. For dilution-type measurement systems, you must use the alternative interference check procedure in Section 16 and a co-located, unmodified Method 6 sampling train. Quenching in fluorescence analyzers must be evaluated and remedied unless a dilution system and ambient-level analyzer is used. This may be done by preparing the calibration gas to contain within 1 percent of the absolute oxygen and carbon dioxide content of the measured gas, preparing the calibration gas in air and using vendor nomographs, or by other acceptable means.

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Method 7—Determination of Nitrogen Oxide Emissions From Stationary Sources

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4.0 Interferences

Biased results have been observed when sampling under conditions of high sulfur dioxide concentrations. At or above 2100 ppm SO_2, use five times the H_2O_2 concentration of the Method 7 absorbing solution. Laboratory tests have shown that high concentrations of SO_2 (about 2100 ppm) cause low results in Method 7 and 7A. Increasing the H_2O_2 concentration to five times the original concentration eliminates this bias. However, when no SO_2 is present, increasing the concentration by five times results in a low bias.

* * * * *

10.2 Barometer. Calibrate against a mercury barometer or NIST-traceable barometer prior to the field test.

10.3 Temperature Gauge. Calibrate dial thermometers against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

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Method 7A—Determination of Nitrogen Oxide Emissions From Stationary Sources (Ion Chromatographic Method)

* * * * *

4.0 Interferences

Biased results have been observed when sampling under conditions of high sulfur dioxide concentrations. At or above 2100 ppm SO_2, use five times the H_2O_2 concentration of the Method 7 absorbing solution. Laboratory tests have shown that high concentrations of SO_2 (about 2100 ppm) cause low results in Method 7 and 7A. Increasing the H_2O_2 concentration to five times the original concentration eliminates this bias. However, when no SO_2 is present, increasing the concentration by five times results in a low bias.

* * * * *

10.4 Temperature Gauge. Calibrate dial thermometers against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

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Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure)

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6.1 What do I need for the measurement system? You may use any equipment and supplies meeting the following specifications:

(1) Sampling system components that are not evaluated in the system bias or system calibration error test must be glass, Teflon, or stainless steel. Other materials are potentially acceptable, subject to approval by the Administrator.

(2) The interference, calibration error, and system bias criteria must be met.

(3) Sample flow rate must be maintained within 10 percent of the flow rate at which the system response time was measured.

(4) All system components (excluding sample conditioning components, if used) must maintain the sample temperature above the moisture dew point. Ensure minimal contact between any condensate and the sample gas. Section 6.2 provides example equipment specifications for a NO_X measurement system. Figure 7E–1 is a diagram of an example dry-basis measurement system that is likely to meet the method requirements and is provided as guidance. For wet-basis systems, you may use alternative equipment and supplies as needed (some of which are described in Section 6.2), provided that the measurement system meets the applicable performance specifications of this method.

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7.1.1 High-Level Gas. This concentration is chosen to set the calibration span as defined in Section 3.4.

* * * * *

8.2.5 Initial System Bias and System Calibration Error Checks. Before sampling begins, determine whether the high-level or mid-level calibration gas best approximates the emissions and use it as the upscale gas. Introduce the upscale gas at the probe upstream of all sample conditioning components in system calibration mode. Record the time it takes for the measured concentration to increase to a value that is at least 95 percent or within 0.5 ppm (whichever is less restrictive) of a stable response for both the low-level and upscale gases. Continue to observe the gas concentration reading until it has reached a final, stable value. Record this value on a form similar to Table 7E–2.

* * * * *

8.2.7 Interference Check. Conduct an interference response test of the gas analyzer prior to its initial use in the field. If you have multiple analyzers of the same make and model, you need only perform this alternative interference check on one analyzer. You may also meet the interference check requirement if the instrument manufacturer performs this or a similar check on an analyzer of the same make and model of analyzer that you use and provides you with documented results. Analytical quenching must be evaluated and remedied unless a dilution system and ambient-level analyzer are used. The analyzer must be checked for quenching at concentrations of approximately 4 and 12 percent CO_2 at a mid-range concentration for each analyzer range which is commonly used. The analyzer must be rechecked after it has been repaired or modified or on another periodic basis.

* * *

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16.2.2 Bag Procedure. Perform the analyzer calibration error test to document the calibration (both NO and NO_X modes, as applicable). Fill a Tedlar or equivalent bag approximately half full with either ambient air, pure oxygen, or an oxygen standard gas with at least 19.5 percent by volume oxygen content. Fill the remainder of the bag with mid- to high-level NO in N_2 (or other appropriate concentration) calibration gas. (Note that the concentration of the NO standard should be sufficiently high enough for the diluted concentration to be easily and accurately measured on the scale used. The size of the bag should be large enough to accommodate the procedure and time required. Verify through the manufacturer that the Tedlar alternative is suitable for NO and make this verifed information available for inspection.)

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Method 8—Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions From Stationary Sources

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12.1 * * *

V_{soln} = Total volume of solution in which the sample is contained, 1000 ml for the SO_2 sample and 250 ml for the H_2SO_4 sample.

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17.0 Tables, Diagrams, Flowcharts, and Validation Data

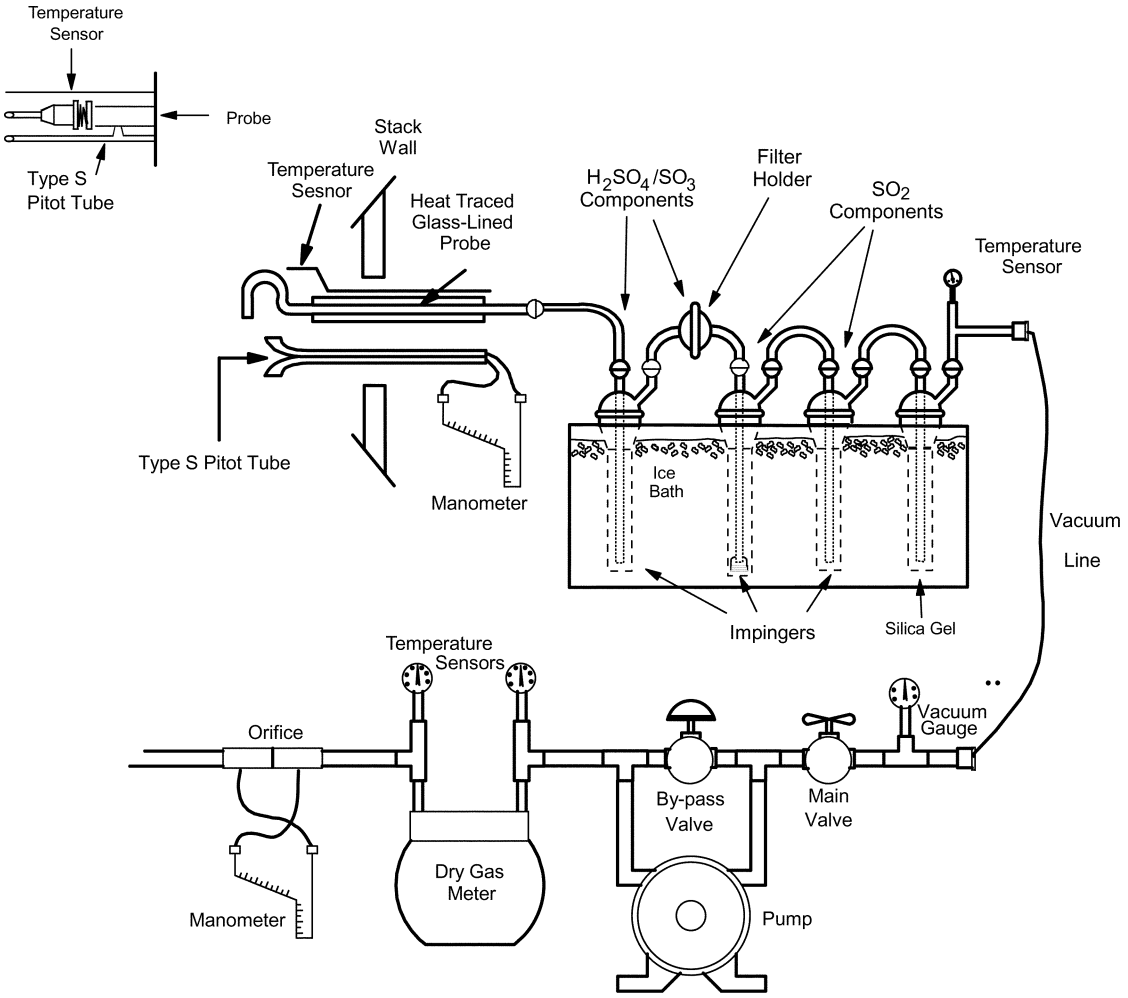

Figure 8-1. Sulfuric Acid Sampling Train

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Method 10—Determination of Carbon Monoxide Emissions From Stationary Sources

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6.2.5 Flexible Bag. Tedlar, or equivalent, with a capacity of 60 to 90 liters (2 to 3 ft^3). (Verify through the manufacturer that the Tedlar alternative is suitable for CO and make this verified information available for inspection.) Leak-test the bag in the laboratory before using by evacuating with a pump followed by a dry gas meter. When the evacuation is complete, there should be no flow through the meter. Gas tanks may be used in place of bags if the samples are analyzed within one week.

* * * * *

8.4.2 Integrated Sampling. Evacuate the flexible bag. Set up the equipment as shown in Figure 10–1 with the bag disconnected. Place the probe in the stack and purge the sampling line. Connect the bag, making sure that all connections are leak-free. Sample at a rate proportional to the stack velocity. If needed, the CO_2 content of the gas may be determined by using the Method 3 integrated sample procedures, or by weighing an ascarite CO_2 removal tube used and computing CO_2 concentration from the gas volume sampled and the weight gain of the tube. Data may be recorded on a form similar to Table 10–1. If a tank is used for sample collection, follow procedures similar to those in Sections 8.1.2, 8.2.3, 8.3, and 12.4 of Method 25 as appropriate to prepare the tank, conduct the sampling, and correct the measured sample concentration.

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Method 10A—Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries

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2.0 Summary of Method

An integrated gas sample is extracted from the stack, passed through an alkaline permanganate solution to remove sulfur oxides and nitrogen oxides, and collected in a Tedlar or equivalent bag. (Verify through the manufacturer that the Tedlar alternative is suitable for NO and make this verified information available for inspection.) The CO concentration in the sample is measured spectrophotometrically using the reaction of CO with *p*-sulfaminobenzoic acid.

* * * * *

8.2.1 Evacuate the bag completely using a vacuum pump. Assemble the apparatus as shown in Figure 10A–1. Loosely pack glass wool in the tip of the probe. Place 400 ml of alkaline permanganate solution in the first two impingers and 250 ml in the third. Connect the pump to the third impinger, and follow this with the surge tank, rate meter,

and 3-way valve. Do not connect the bag to the system at this time.

* * * * *

8.2.3 Purge the system with sample gas by inserting the probe into the stack and drawing the sample gas through the system at 300 ml/min ±10 percent for 5 minutes. Connect the evacuated bag to the system, record the starting time, and sample at a rate of 300 ml/min for 30 minutes, or until the bag is nearly full. Record the sampling time, the barometric pressure, and the ambient temperature. Purge the system as described above immediately before each sample.

* * * * *

11.1 Assemble the system shown in Figure 10A–3, and record the information required in Table 10A–1 as it is obtained. Pipet 10.0 ml of the colorimetric reagent into each gas reaction bulb, and attach the bulbs to the system. Open the stopcocks to the reaction bulbs, but leave the valve to the bag closed. Turn on the pump, fully open the coarse-adjust flow valve, and slowly open the fine-adjust valve until the pressure is reduced to at least 40 mm Hg. Now close the coarse adjust valve, and observe the manometer to be certain that the system is leak-free. Wait a minimum of 2 minutes. If the pressure has increased less than 1 mm Hg, proceed as described below. If a leak is present, find and correct it before proceeding further.

11.2 Record the vacuum pressure (P_v) to the nearest 1 mm Hg, and close the reaction bulb stopcocks. Open the bag valve, and allow the system to come to atmospheric pressure. Close the bag valve, open the pump coarse adjust valve, and evacuate the system again. Repeat this fill/evacuation procedure at least twice to flush the manifold completely. Close the pump coarse adjust valve, open the bag valve, and let the system fill to atmospheric pressure. Open the stopcocks to the reaction bulbs, and let the entire system come to atmospheric pressure. Close the bulb stopcocks, remove the bulbs, record the room temperature and barometric pressure (P_{bar}, to nearest mm Hg), and place the bulbs on the shaker table with their main axis either parallel to or perpendicular to the plane of the table top. Purge the bulb-filling system with ambient air for several minutes between samples. Shake the samples for exactly 2 hours.

* * * * *

12.3 CO Concentration in the Bag. Calculate C_b using Equations 10A–2 and 10A–3. If condensate is visible in the bag, calculate B_w using Table 10A–2 and the temperature and barometric pressure in the analysis room. If condensate is not visible, calculate B_w using the temperature and barometric pressure at the sampling site.

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13.5 Stability. The individual components of the colorimetric reagent are stable for at least one month. The colorimetric reagent must be used within two days after preparation to avoid excessive blank correction. The samples in the bag should be stable for at least one week if the bags are leak-free.

* * * * *

Method 10B—Determination of Carbon Monoxide Emissions From Stationary Sources

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2.1 An integrated gas sample is extracted from the sampling point, passed through a conditioning system to remove interferences, and collected in a Tedlar or equivalent bag. (Verify through the manufacturer that the Tedlar alternative is suitable for NO and make this verifying information available for inspection.) The CO is separated from the sample by gas chromatography (GC) and catalytically reduced to methane (CH_4) which is determined by flame ionization detection (FID). The analytical portion of this method is identical to applicable sections in Method 25 detailing CO measurement.

* * * * *

6.2.3 Sample Injection System. Same as in Method 25, Section 6.3.1.4, equipped to accept a sample line from the bag.

* * * * *

12.2 CO Concentration in the Bag. Calculate C_b using Equations 10B–1 and 10B–2. If condensate is visible in the bag, calculate B_w using Table 10A–2 of Method 10A and the temperature and barometric pressure in the analysis room. If condensate is not visible, calculate B_w using the temperature and barometric pressure at the sampling site.

* * * * *

■ 26. Amend appendix A–5 to part 60 as follows:

■ a. By revising Method 11, sections 8.5 and 10.1.2.

■ b. Amend Method 12 as follows:

■ i. By revising section 16.1.

■ ii. By adding sections 16.4, 16.5, and 16.6.

■ c. By adding a sentence to the end of Method 14A, section 10.1.1.

Appendix A–5 to Part 60—Test Methods 11 Through 15A

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Method 11—Determination of Hydrogen Sulfide Content of Fuel Gas Streams in Petroleum Refineries

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8.5 Sample for at least 10 minutes. At the end of the sampling time, close the sampling valve, and record the final volume and temperature readings. Conduct a leak-check as described in Section 8.2. A yellow color in the final cadmium sulfate impinger indicates depletion of the absorbing solution. An additional cadmium sulfate impinger should be added for subsequent samples and the sample with yellow color in the final impinger should be voided.

* * * * *

10.1.2 Temperature Sensors. Calibrate against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is at a minimum equivalent in terms of performance or suitably effective for the specific temperature measurement application.

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Method 12—Determination of Inorganic Lead Emissions From Stationary Sources

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16.1 Simultaneous Determination of Particulate Matter and Lead Emissions. Method 12 may be used to simultaneously determine Pb provided:

(1) Acetone is used to remove particulate from the probe and inside of the filter holder as specified by Method 5,

(2) 0.1 N HNO_3 is used in the impingers,

(3) A glass fiber filter with a low Pb background is used, and

(4) The entire train contents, including the impingers, are treated and analyzed for Pb as described in Sections 8.0 and 11.0 of this method.

* * * * *

16.4 Inductively Coupled Plasma-Atomic Emission Spectrometry (ICP–AES) Analysis. ICP–AES may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.4.1 Sample collection, sample preparation, and analytical preparation procedures are as defined in the method except as necessary for the ICP–AES application.

16.4.2 The limit of quantitation for the ICP–AES must be demonstrated, and the sample concentrations reported should be no less than two times the limit of quantitation. The limit of quantitation is defined as ten times the standard deviation of the blank value. The standard deviation of the blank value is determined from the analysis of seven blanks. It has been reported that for mercury and those elements that form hydrides, a continuous-flow generator coupled to an ICP–AES offers detection limits comparable to cold vapor atomic absorption.

16.5 Inductively Coupled Plasma-Mass Spectrometry (ICP–MS) Analysis. ICP–MS may be used as an alternative to atomic absorption analysis.

16.6 Cold Vapor Atomic Fluorescence Spectrometry (CVAFS) Analysis. CVAFS may be used as an alternative to atomic absorption analysis.

* * * * *

Method 14A—Determination of Total Fluoride Emissions From Selected Sources at Primary Aluminum Production Facilities

* * * * *

10.1.1 * * * Allowable tolerances for Y and ΔH@ are given in Figure 5–5 of Method 5 of this appendix.

* * * * *

■ 27. Amend appendix A–6 to part 60 as follows:

■ a. By revising Method 16A, section 1.2.

■ b. By revising Method 16C, sections 12.1 and 12.5.

■ c. By revising Method 18, sections 8.2.1.1.2, 8.2.1.4, 8.2.1.4.2, 16.1.1.12, 16.1.3.2, and the headings of figures 18–3 and 18–10.

■ d. By redesignating section 8.2.1.5.2.3 as section 8.2.1.5.2.2.

■ e. By adding a new section 8.2.1.5.2.3.

Appendix A–6 to Part 60—Test Methods 16 Through 18

* * * * *

Method 16A—Determination of Total Reduced Sulfur Emissions From Stationary Sources (Impinger Technique)

* * * * *

1.2 Applicability. This method is applicable for the determination of TRS emissions from recovery boilers, lime kilns, and smelt dissolving tanks at kraft pulp mills, reduced sulfur compounds (H_2S, carbonyl sulfide, and carbon disulfide) from sulfur recovery units at onshore natural gas processing facilities, and from other sources when specified in an applicable subpart of the regulations. The flue gas must contain at least 1 percent oxygen for complete oxidation of all TRS to SO_2. Note: If sources other than kraft pulp mills experience low oxygen levels in the emissions, the method results may be biased low.

* * * * *

Method 16C—Determination of Total Reduced Sulfur Emissions From Stationary Sources

* * * * *

12.1 Nomenclature.

ACE = Analyzer calibration error, percent of calibration span.

CD = Calibration drift, percent.

C_{Dir} = Measured concentration of a calibration gas (low, mid, or high) when introduced in direct calibration mode, ppmv.

C_{H2S} = Concentration of the system performance check gas, ppmv H_2S.

C_S = Measured concentration of the system performance gas when introduced in system calibration mode, ppmv H_2S.

C_V = Manufacturer certified concentration of a calibration gas (low, mid, or high), ppmv SO_2.

C_{SO2} = Unadjusted sample SO_2 concentration, ppmv.

C_{TRS} = Total reduced sulfur concentration corrected for system performance, ppmv.

DF = Dilution system (if used) dilution factor, dimensionless.

SP = System performance, percent.

* * * * *

12.5 TRS Concentration as SO_2. For each sample or test run, calculate the arithmetic average of SO_2 concentration values (e.g., 1-minute averages). Then calculate the sample TRS concentration by adjusting the average value of C_{SO2} for system performance using Equation 16C–4.

$$C_{TRS} = \frac{\overline{C_{SO2}}}{1 - \left|\overline{SP}\right|} \qquad \text{Eq. 16C-4}$$

* * * * *

Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography

* * * * *

8.2.1.1.2 Sampling Procedure. To obtain a sample, assemble the sample train as shown in Figure 18–9. Leak-check both the bag and the container. Connect the vacuum line from the needle valve to the Teflon sample line from the probe. Place the end of the probe at the centroid of the stack or at a point no closer to the walls than 1 in., and start the pump. Set the flow rate so that the final volume of the sample is approximately 80 percent of the bag capacity. After allowing sufficient time to purge the line several times, connect the vacuum line to the bag, and evacuate until the rotameter indicates no flow. Then position the sample and vacuum lines for sampling, and begin the actual sampling, keeping the rate proportional to the stack velocity. As a precaution, direct the gas exiting the rotameter away from sampling personnel. At the end of the sample period, shut off the pump, disconnect the sample line from the bag, and disconnect the vacuum line from the bag container. Record the source temperature, barometric pressure, ambient temperature, sampling flow rate, and initial and final sampling time on the data sheet shown in Figure 18–10. Protect the bag and its container from sunlight. Record the time lapsed between sample collection and analysis, and then conduct the recovery procedure in Section 8.4.2.

* * * * *

8.2.1.4 Other Modified Bag Sampling Procedures. In the event that condensation is observed in the bag while collecting the sample and a direct interface system cannot be used, heat the bag during collection and maintain it at a suitably elevated temperature during all subsequent operations. (Note: Take care to leak-check the system prior to the dilutions so as not to create a potentially explosive atmosphere.) As an alternative, collect the sample gas, and simultaneously dilute it in the bag.

* * * * *

8.2.1.4.2 Second Alternative Procedure. Prefill the bag with a known quantity of inert gas. Meter the inert gas into the bag according to the procedure for the preparation of gas concentration standards of volatile liquid materials (Section 10.1.2.2), but eliminate the midget impinger section. Take the partly filled bag to the source, and meter the source gas into the bag through heated sampling lines and a heated flowmeter, or Teflon positive displacement pump. Verify the dilution factors before sampling each bag through dilution and analysis of gases of known concentration.

* * * * *

8.2.1.5.2.3 Analyze the two field audit samples as described in Section 9.2 by connecting each bag containing an audit gas mixture to the sampling valve. Calculate the results; record and report the data to the audit supervisor.

* * * * *

16.1.1.12 Flexible Bags. Tedlar or equivalent, 10- and 50-liter capacity, for preparation of standards. (Verify through the manufacturer that the Tedlar alternative is suitable for the compound of interest and make this verifying information available for inspection.)

* * * * *

16.1.3.2 Flexible Bag Procedure. Any leak-free plastic (e.g., Tedlar, Mylar, Teflon) or plastic-coated aluminum (e.g., aluminized Mylar) bag, or equivalent, can be used to obtain the pre-survey sample. Use new bags, and leak-check them before field use. In addition, check the bag before use for contamination by filling it with nitrogen or air and analyzing the gas by GC at high sensitivity. Experience indicates that it is desirable to allow the inert gas to remain in the bag about 24 hours or longer to check for desorption of organics from the bag. Follow the leak-check and sample collection procedures given in Section 8.2.1.

* * * * *

18.0 * * *

Figure 18–3. Preparation of Standards in Tedlar or Tedlar-Equlivalent Bags and Calibration Curve

* * * * *

Figure 18–10. Field Sample Data Sheet—Tedlar or Tedlar-Equivalent Bag Collection Method

* * * * *

■ 28. Amend appendix A–7 to part 60 as follows:

■ a. By amending Method 23 as follows:

■ i. By revising sections 2.2.7, 4.1.1.3, and 4.2.7.

■ ii. By adding and reserving section 8.0.

■ b. By revising Method 24, section 11.2.2.

■ c. By revising Method 25, section 7.1.3.

■ d. Amend Method 25C as follows:

■ i. By revising sections 6.1 and 12.1.

■ ii. By adding a new section 8.2.3.

■ e. By revising Method 25D, the first sentence in section 9.1.

Appendix A–7 to Part 60—Test Methods 19 Through 25E

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Method 23—Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans From Stationary Sources

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2.2.7 Storage Container. Air-tight container to store silica gel.

* * * * *

4.1.1.3 Sample Train. It is suggested that all components be maintained according to the procedure described in APTD–0576. Alternative mercury-free thermometers may be used if the thermometers are, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

4.2.7 Silica Gel. Note the color of the indicating silica gel to determine if it has been completely spent and make a mention of its condition. Transfer the silica gel from the fifth impinger to its original container and seal. If a moisture determination is made, follow the applicable procedures in sections 8.7.6.3 and 11.2.3 of Method 5 to handle and weigh the silica gel. If moisture is not measured, the silica gel may be disposed.

* * * * *

8.0 [Reserved]

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Method 24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

* * * * *

11.2.2 Volatile Content. To determine total volatile content, use the apparatus and reagents described in ASTM D2369 (incorporated by reference; see § 60.17 for the approved versions of the standard), respectively, and use the following procedures:

* * * * *

Method 25—Determination of Total Gaseous Nonmethane Organic Emissions as Carbon

* * * * *

7.1.3 Filters. Glass fiber filters, without organic binder, exhibiting at least 99.95 percent efficiency (<0.05 percent penetration) on 0.3 micron dioctyl phthalate smoke particles. The filter efficiency test shall be conducted in accordance with ASTM Method D2986–71, 78, or 95a (incorporated by reference—see § 60.17). Test data from the supplier's quality control program are sufficient for this purpose.

* * * * *

Method 25C—Determination of Nonmethane Organic Compounds (NMOC) in MSW Landfill Gases

* * * * *

6.1 Sample Probe. Stainless steel, with the bottom third perforated. Teflon probe liners and sampling lines are also allowed. Non-perforated probes are allowed as long as they are withdrawn to create a gap equivalent to having the bottom third perforated. The sample probe must be capped at the bottom and must have a threaded cap with a sampling attachment at the top. The sample probe must be long enough to go through and extend no less than 0.9 m (3 ft) below the landfill cover. If the sample probe is to be driven into the landfill, the bottom cap should be designed to facilitate driving the probe into the landfill.

* * * * *

8.2.3 Driven Probes. Closed-point probes may be driven directly into the landfill in a single step. This method may not require backfilling if the probe is adequately sealed by its insertion. Unperforated probes that are inserted in this manner and withdrawn at a distance from a detachable tip to create an open space are also acceptable.

* * * * *

12.1 Nomenclature.

B_w = Moisture content in the sample, fraction.

C_{N2} = Reported N_2 concentration (C_{N2Corr} by Method 3C), fraction.

C_t = Calculated NMOC concentration, ppmv C equivalent.

C_{tm} = Measured NMOC concentration, ppmv C equivalent.

P_b = Barometric pressure, mm Hg.

P_t = Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.

P_{tf} = Final gas sample tank pressure after pressurizing, mm Hg absolute.

P_{ti} = Gas sample tank pressure after evacuation, mm Hg absolute.

P_w = Vapor pressure of H_2O (from Table 25C–1), mm Hg.

r = Total number of analyzer injections of sample tank during analysis (where j=injection number, 1 . . . r).

T_t = Sample tank temperature at completion of sampling, °K.

T_{ti} = Sample tank temperature before sampling, °K.

T_{tf} = Sample tank temperature after pressurizing, °K.

* * * * *

Method 25D—Determination of the Volatile Organic Concentration of Waste Samples

* * * * *

9.1 Quality Control Samples. If audit samples are not available, prepare and analyze the two types of quality control samples (QCS) listed in Sections 9.1.1 and 9.1.2. * * *

* * * * *

■ 29. Amend appendix A–8 to part 60 as follows:

■ a. By amending Method 26 as follows:

■ i. By revising sections 6.1.1, 6.1.5, and 8.1.2.

■ ii. By redesignating sections 16.0 and 17.0 as sections 17.0 and 18.0, respectively.

■ iii. By adding a new section 16.0.

■ b. By revising Method 26A, sections 6.1.7, 8.1.5, and 8.1.6.

■ c. By amending Method 29 as follows:

■ i. By redesignating sections 16.0 and 17.0 as sections 17.0 and 18.0, respectively.

■ ii. By adding a new section 16.0.

■ d. By revising Method 30B, the introductory text to section 8.2.2.1, the note to section 8.2.4, the note to section 8.2.6.2, and sections 9.0, 10.3, 10.4, 11.3.

Appendix A–8 to Part 60—Text Methods 26 Through 30B

* * * * *

Method 26—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources Non-Isokinetic Method

* * * * *

6.1.1 Probe. Borosilicate glass, approximately 3/8-in. (9-mm) I.D. with a heating system capable of maintaining a probe gas temperature during sampling between 120 and 134 °C (248 and 273 °F) to prevent moisture condensation; or Teflon where stack probes are below 210 °C. If HF is a target analyte, then preconditioning of new teflon components by heating should be considered to prevent potential HF outgassing. A Teflon-glass filter in a mat configuration should be installed to remove particulate matter from the gas stream.

* * * * *

6.1.5 Heating System. Any heating system capable of maintaining a temperature around the probe and filter holder between 120 and 134 °C (248 and 273 °F) during sampling, or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application.

* * * * *

8.1.2 Adjust the probe temperature and the temperature of the filter and the stopcock (i.e., the heated area in Figure 26–1) to a temperature sufficient to prevent water condensation. This temperature must be maintained between 120 and 134 °C (248 and 273 °F). The temperature should be monitored throughout a sampling run to ensure that the desired temperature is maintained. It is important to maintain a temperature around the probe and filter in this range since it is extremely difficult to purge acid gases off these components. (These components are not quantitatively recovered and, hence, any collection of acid gases on these components would result in potential undereporting of these emissions. The applicable subparts may specify alternative higher temperatures.)

* * * * *

16.0 Alternative Procedures

Method 26A. Method 26A, which uses isokinetic sampling equipment, is an acceptable alternative to Method 26.

* * * * *

Method 26A—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources—Isokinetic Method

* * * * *

6.1.7 Heating System. Any heating system capable of maintaining a temperature around the probe and filter holder between 120 and 134 °C (248 to 273 °F) during sampling, or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application.

* * * * *

8.1.5 Sampling Train Operation. Follow the general procedure given in Method 5, Section 8.5. It is important to maintain a temperature around the probe, filter (and cyclone, if used) between 120 and 134 °C (248 and 273 °F) since it is extremely difficult to purge acid gases off these components. (These components are not quantitatively recovered and hence any collection of acid gases on these components would result in potential undereporting these emissions. The applicable subparts may specify alternative higher temperatures.) For each run, record the data required on a data sheet such as the one shown in Method 5, Figure 5–3. If the condensate impinger becomes too full, it may be emptied, recharged with 50 ml of 0.1 N H2SO4, and replaced during the sample run. The condensate emptied must be saved and included in the measurement of the volume of moisture collected and included in the sample for analysis. The additional 50 ml of absorbing reagent must also be considered in calculating the moisture. Before the sampling train integrity is compromised by removing the impinger, conduct a leak-check as described in Method 5, Section 8.4.2.

8.1.6 Post-Test Moisture Removal (Optional). When the optional cyclone is included in the sampling train or when

liquid is visible on the filter at the end of a sample run even in the absence of a cyclone, perform the following procedure. Upon completion of the test run, connect the ambient air conditioning tube at the probe inlet and operate the train with the filter heating system between 120 and 134 °C (248 and 275 °F) at a low flow rate (e.g., ΔH = 1 in. H_2O) to vaporize any liquid and hydrogen halides in the cyclone or on the filter and pull them through the train into the impingers. After 30 minutes, turn off the flow, remove the conditioning tube, and examine the cyclone and filter for any visible liquid. If liquid is visible, repeat this step for 15 minutes and observe again. Keep repeating until the cyclone is dry.

* * * * *

Method 29—Determination of Metals Emissions From Stationary Sources

* * * * *

16.0 Alternative Procedures

16.1 Alternative Analyzer. Samples may also be analyzed by cold vapor atomic fluorescence spectrometry.

16.2 [Reserved].

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Method 30B—Determination of Total Vapor Phase Mercury Emissions From Coal-Fired Combustion Sources Using Carbon Sorbent Traps

* * * * *

8.2.2.1 Determination of Minimum Calibration Concentration or Mass. Based on your instrument's sensitivity and linearity, determine the calibration concentrations or masses that make up a representative low level calibration range. Verify that you are able to meet the multipoint calibration performance criteria in section 11.0 of this method. Select a calibration concentration or mass that is no less than 2 times the lowest concentration or mass in your calibration curve. The lowest point in your calibration curve must be at least 5, and preferably 10, times the Method Detection Limit (MDL), which is the minimum amount of the analyte that can be detected and reported. The MDL must be determined at least once for the analytical system using an MDL study such as that found in section 15.0 to Method 301 of appendix A to part 63 of this chapter.

* * * * *

8.2.4 * * *

Note to Section 8.2.4: For the purposes of relative accuracy testing of Hg monitoring systems under subpart UUUUU of part 63 of this chapter and Performance Specifications 12A and 12B in appendix B to this part, when the stack gas Hg concentration is expected to be very low (<0.5 μg/dscm), you may estimate the Hg concentration at 0.5 μg/dscm.

* * * * *

8.2.6.2 * * *

Note to Section 8.2.6.2: It is acceptable to perform the field recovery test concurrent with actual test runs (e.g., through the use of a quad probe). It is also acceptable to use the field recovery test runs as test runs for emissions testing or for the RATA of a Hg monitoring system under subpart UUUUU of part 63 of this chapter and Performance Specifications 12A and 12B in appendix B to this part, if certain conditions are met. To determine whether a particular field recovery test run may be used as a RATA run, subtract the mass of the Hg^0 spike from the total Hg mass collected in sections 1 and 2 of the spiked trap. The difference represents the mass of Hg in the stack gas sample. Divide this mass by the sample volume to obtain the Hg concentration in the effluent gas stream, as measured with the spiked trap. Compare this concentration to the corresponding Hg concentration measured with the unspiked trap. If the paired trains meet the relative deviation and other applicable data validation criteria in Table 9–1, then the average of the two Hg concentrations may be used as an emissions test run value or as the reference method value for a RATA run.

* * * * *

9.0 Quality Assurance and Quality Control

Table 9–1 summarizes the QA/QC performance criteria that are used to validate the Hg emissions data from Method 30B sorbent trap measurement systems.

TABLE 9–1—QUALITY ASSURANCE/QUALITY CONTROL CRITERIA FOR METHOD 30B

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Gas flow meter calibration (At 3 settings or points).	Calibration factor (Y_i) at each flow rate must be within ±2% of the average value (Y).	Prior to initial use and when post-test check is not within ±5% of Y.	Recalibrate at 3 points until the acceptance criteria are met.
Gas flow meter post-test calibration check (Single-point).	Calibration factor (Y_i) must be within ±5% of the Y value from the most recent 3-point calibration.	After each field test. For mass flow meters, must be done on-site, using stack gas.	Recalibrate gas flow meter at 3 points to determine a new value of Y. For mass flow meters, must be done on-site, using stack gas. Apply the new Y value to the field test data.
Temperature sensor calibration	Absolute temperature measures by sensor within ±1.5% of a reference sensor.	Prior to initial use and before each test thereafter.	Recalibrate; sensor may not be used until specification is met.
Barometer calibration	Absolute pressure measured by instrument within ±10 mm Hg of reading with a mercury barometer or NIST traceable barometer.	Prior to initial use and before each test thereafter.	Recalibrate; instrument may not be used until specification is met.
Pre-test leak check	≤4% of target sampling rate	Prior to sampling	Sampling shall not commence until the leak check is passed.
Post-test leak check	≤4% of average sampling rate	After sampling	Sample invalidated.*
Analytical matrix interference test (wet chemical analysis, only).	Establish minimum dilution (if any) needed to eliminate sorbent matrix interferences.	Prior to analyzing any field samples; repeat for each type of sorbent used.	Field sample results not validated.
Analytical bias test	Average recovery between 90% and 110% for Hg^0 and $HgCl_2$ at each of the 2 spike concentration levels.	Prior to analyzing field samples and prior to use of new sorbent media.	Field samples shall not be analyzed until the percent recovery criteria has been met.
Multipoint analyzer calibration	Each analyzer reading within ±10% of true value *and* $r^2 \geq 0.99$.	On the day of analysis, before analyzing any samples.	Recalibrate until successful.
Analysis of independent calibration standard.	Within ±10% of true value	Following daily calibration, prior to analyzing field samples.	Recalibrate and repeat independent standard analysis until successful.

TABLE 9–1—QUALITY ASSURANCE/QUALITY CONTROL CRITERIA FOR METHOD 30B—Continued

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Analysis of continuing calibration verification standard (CCVS).	Within ±10% of true value	Following daily calibration, after analyzing ≤10 field samples, and at end of each set of analyses.	Recalibrate and repeat independent standard analysis, reanalyze samples until successful, if possible; for destructive techniques, samples invalidated.
Test run total sample volume	Within ±20% of total volume sampled during field recovery test.	Each individual sample	Sample invalidated.
Sorbent trap section 2 breakthrough.	For compliance/emissions testing: ≤10% of section 1 Hg mass for Hg concentrations >1 μg/dscm; ≤20% of section 1 Hg mass for Hg concentrations ≤1 μg/dscm. ≤50% of section 1 Hg mass if the stack Hg concentration is ≤30% of the Hg concentration that is equivalent to the applicable emission limit. For relative accuracy testing: ≤10% of section 1 Hg mass for Hg concentrations >1 μg/dscm; ≤20% of section 1 Hg mass for Hg concentrations ≤1 μg/dscm and >0.5 μg/dscm; ≤50% of section 1 Hg mass for Hg concentrations ≤0.5 μg/dscm >0.1 μg/dscm; no criterion for Hg concentrations ≤0.1 μg/dscm (must meet all other QA/QC specifications).	Every sample	Sample invalidated.*
Paired sorbent trap agreement	≤10% Relative Deviation (RD) mass for Hg concentrations >1 μg/dscm; ≤20% RD or ≤0.2 μg/dscm absolute difference for Hg concentrations ≤1 μg/dscm.	Every run	Run invalidated.*
Sample analysis	Within valid calibration range (within calibration curve).	All Section 1 samples where stack Hg concentration is ≥0.02 μg/dscm except in case where stack Hg concentration is ≤30% of the applicable emission limit.	Reanalyze at more concentrated level if possible, samples invalidated if not within calibrated range.
Sample analysis	Within bounds of Hg^0 and $HgCl_2$ Analytical Bias Test.	All Section 1 samples where stack Hg concentration is ≥0.5 μg/dscm.	Expand bounds of Hg^0 and $HgCl_2$ Analytical Bias Test; if not successful, samples invalidated.
Field recovery test	Average recovery between 85% and 115% for Hg^0.	Once per field test	Field sample runs not validated without successful field recovery test.

* And data from the pair of sorbent traps are also invalidated.

* * * * *

10.3 Thermocouples and Other Temperature Sensors. Use the procedures and criteria in Section 10.3 of Method 2 in appendix A–1 to this part to calibrate in-stack temperature sensors and thermocouples. Dial thermometers shall be calibrated against mercury-in-glass thermometers or equivalent. Calibrations must be performed prior to initial use and before each field test thereafter. At each calibration point, the absolute temperature measured by the temperature sensor must agree to within ±1.5 percent of the temperature measured with the reference sensor, otherwise the sensor may not continue to be used.

10.4 Barometer. Calibrate against a mercury barometer or other NIST-traceable barometer as per Section 10.6 of Method 5 in appendix A–3 to this part. Calibration must be performed prior to initial use and before each test program, and the absolute pressure measured by the barometer must agree to within ±10 mm Hg of the pressure measured by the mercury or other NIST-traceable barometer, otherwise the barometer may not continue to be used.

* * * * *

11.3 Field Sample Analyses. Analyze the sorbent trap samples following the same procedures that were used for conducting the Hg^0 and $HgCl_2$ analytical bias tests. The individual sections of the sorbent trap and their respective components must be analyzed separately (i.e., section 1 and its components, then section 2 and its components). All sorbent trap section 1 sample analyses must be within the

calibrated range of the analytical system as specified in Table 9–1. For wet analyses, the sample can simply be diluted to fall within the calibrated range. However, for the destructive thermal analyses, samples that are not within the calibrated range cannot be re-analyzed. As a result, the sample cannot be validated, and another sample must be collected. It is strongly suggested that the analytical system be calibrated over multiple ranges so that thermally analyzed samples fall within the calibrated range. The total mass of Hg measured in each sorbent trap section 1 must also fall within the lower and upper mass limits established during the initial Hg^0 and $HgCl_2$ analytical bias test. If a sample is analyzed and found to fall outside of these limits, it is acceptable for an additional Hg^0 and $HgCl_2$ analytical bias test to be performed that now includes this level. However, some samples (e.g., the mass collected in trap section 2), may have Hg levels so low that it may not be possible to quantify them in the analytical system's calibrated range. Because a reliable estimate of these low-level Hg measurements is necessary to fully validate the emissions data, the MDL (see section 8.2.2.1 of this method) is used to establish the minimum amount that can be detected and reported. If the measured mass or concentration is below the lowest point in the calibration curve and above the MDL, the analyst must estimate the mass or concentration of the sample based on the analytical instrument response relative to an additional calibration standard at a concentration or mass between the MDL and the lowest point in the calibration curve. This is accomplished by establishing a response factor (e.g., area counts per Hg mass or concentration) and estimating the amount of Hg present in the sample based on the analytical response and this response factor.

Example: The analysis of a particular sample results in a measured mass above the MDL, but below the lowest point in the calibration curve which is 10 ng. An MDL of 1.3 ng Hg has been established by the MDL study. A calibration standard containing 5 ng of Hg is analyzed and gives an analytical response of 6,170 area counts, which equates to a response factor of 1,234 area counts/ng Hg. The analytical response for the sample is 4,840 area counts. Dividing the analytical response for the sample (4,840 area counts) by the response factor gives 3.9 ng Hg, which is the estimated mass of Hg in the sample.

* * * * *

■ 30. Amend appendix B to part 60 as follows:

■ a. By revising Performance Specification 3, section 13.2.

■ b. By revising Performance Specification 4, section 8.2.

■ c. By revising Performance Specification 4B, section 7.1.1.

■ d. By amending Performance Specification 7 as follows:

■ i. By revising section 8.4.

■ ii. By adding reference 5. to section 16.0.

■ e. By revising Performance Specification 11, sections 12.1(1) and (2).

■ f. By revising Performance Specification 12B, table 12B–1 in section 9.0 and section 12.8.3.

■ g. By revising Performance Specification 15, sections 11.1.1.4.2 and 11.1.1.4.3.

■ h. By revising Performance Specification 16, sections 6.1.7, 8.2.1, 9.1, 9.3, 9.4, 12.4, and 13.5.

Appendix B to Part 60—Performance Specifications

* * * * *

Performance Specification 3—Specifications and Test Procedures for O_2 and CO_2 Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

13.2 CEMS Relative Accuracy Performance Specification. The RA of the CEMS must be no greater than 20 percent of the mean value of the reference method (RM) data. The results are also acceptable if the absolute value of the difference between the mean RM value and the mean CEMS value is less than or equal to 1.0 percent O_2 (or CO_2).

* * * * *

Performance Specification 4—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

8.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Method 10, 10A, 10B or other approved alternative are the RM for this PS.

* * * * *

Performance Specification 4B—Specifications and Test Procedures for Carbon Monoxide and Oxygen Continuous Monitoring Systems in Stationary Sources

* * * * *

7.1.1 *Calculations.* Summarize the results on a data sheet. Average the differences between the instrument response and the certified cylinder gas value for each gas. Calculate the CE results for the CO monitor according to:

CE = | d/FS | x 100 (1)

Where d is the mean difference between the CEMS response and the known reference concentration, and FS is the span value. The CE for the O_2 monitor is the average percent O_2 difference between the O_2 monitor and the certified cylinder gas value for each gas.

* * * * *

Performance Specification 7—Specifications and Test Procedures for Hydrogen Sulfide Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

8.4 Relative Accuracy Test Procedure.

8.4.1 Sampling Strategy for RM Tests, Number of RM Tests, Correlation of RM and CEMS Data, and Calculations. These are the same as that in PS–2, Sections 8.4.3 (except as specified below), 8.4.4, 8.4.5, and 8.4.6, respectively.

8.4.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Methods 11, 15, and 16 may be used for the RM for this PS.

8.4.2.1 Sampling Time Per Run—Method 11. A sampling run, when Method 11 (integrated sampling) is used, shall consist of a single measurement for at least 10 minutes and 0.010 dscm (0.35 dscf). Each sample shall be taken at approximately 30-minute intervals.

8.4.2.2 Sampling Time Per Run—Methods 15 and 16. The sampling run shall consist of two injections equally spaced over a 30-minute period following the procedures described in the particular method. **Note:** Caution! Heater or non-approved electrical probes should not be used around explosive or flammable sources.

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16.0 * * *

5. Letter to RAMCON Environmental Corp. from Robert Kellam, December 27, 1992.

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Performance Specification 11—Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

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12.1 * * *

(1) Calculate the upscale drift (UD) using Equation 11–1:

$$UD = \frac{|R_{CEM} - R_U|}{FS} \times 100 \qquad \text{(Eq. 11-1)}$$

Where:

UD = The upscale (high-level) drift of your PM CEMS in percent,

R_{CEM} = The measured PM CEMS response to the upscale reference standard, and

R_U = The pre-established numerical value of the upscale reference standard.

FS= Full-scale value.

(2) Calculate the zero drift (ZD) using Equation 11–2:

$$ZD = \frac{|R_{CEM} - R_L|}{FS} \times 100 \qquad \text{(Eq. 11-2)}$$

Where:

ZD = The zero (low-level) drift of your PM CEMS in percent,

R_{CEM} = The measured PM CEMS response to the zero reference standard,

R_L = The pre-established numerical value of the zero reference standard, and

FS = Full-scale value.

* * * * *

Performance Specification 12B—Specifications and Test Procedures for Monitoring Total Vapor Phase Mercury Emissions from Stationary Sources Using a Sorbent Trap Monitoring System

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9.0 * * *

TABLE 12B–1—QA/QC CRITERIA FOR SORBENT TRAP MONITORING SYSTEMS

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Pre-test leak check	≤4% of target sampling rate	Prior to monitoring	Monitoring must not commence until the leak check is passed.
Post-test leak check	≤4% of average sampling rate	After monitoring	Invalidate the data from the paired traps or, if certain conditions are met, report adjusted data from a single trap (see Section 12.8.3).
Ratio of stack gas flow rate to sample flow rate.	No more than 5% of the hourly ratios or 5 hourly ratios (whichever is less restrictive) may deviate from the reference ratio by more than ±25%.	Every hour throughout monitoring period.	Invalidate the data from the paired traps or, if certain conditions are met, report adjusted data from a single trap (see Section 12.8.3).
Sorbent trap section 2 breakthrough.	≤5% of Section 1 Hg mass ≤10% of Section 1 Hg mass if average Hg concentration is ≤0.5 μg/scm. No criterion when Hg concentration for trap less than 10% of the applicable emission limit (must meet all other QA/QC specifications).	Every sample	Invalidate the data from the paired traps or, if certain conditions are met, report adjusted data from a single trap (see Section 12.8.3).
Paired sorbent trap agreement	≤10% Relative Deviation (RD) if the average concentration is > 1.0 μg/m³. ≤20% RD if the average concentration is ≤1.0 μg/m³. Results also acceptable if absolute difference between concentrations from paired traps is ≤ 0.03 μg/m³.	Every sample	Either invalidate the data from the paired traps or report the results from the trap with the higher Hg concentration.
Spike Recovery Study	Average recovery between 85% and 115% for each of the 3 spike concentration levels.	Prior to analyzing field samples and prior to use of new sorbent media.	Field samples must not be analyzed until the percent recovery criteria have been met.
Multipoint analyzer calibration	Each analyzer reading within ± 10% of true value and $r^2 \geq 0.99$.	On the day of analysis, before analyzing any samples.	Recalibrate until successful.
Analysis of independent calibration standard.	Within ± 10% of true value	Following daily calibration, prior to analyzing field samples.	Recalibrate and repeat independent standard analysis until successful.
Spike recovery from section 3 of both sorbent traps.	75–125% of spike amount	Every sample	Invalidate the data from the paired traps or, if certain conditions are met, report adjusted data from a single trap (see Section 12.8.3).
Relative Accuracy	RA ≤ 20.0% of RM mean value; or if RM mean value ≤5.0 μg/scm, absolute difference between RM and sorbent trap monitoring system mean values ≤1.0 μg/scm.	RA specification must be met for initial certification.	Data from the system are invalid until a RA test is passed.

TABLE 12B–1—QA/QC CRITERIA FOR SORBENT TRAP MONITORING SYSTEMS—Continued

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Gas flow meter calibration	An initial calibration factor (Y) has been determined at 3 settings; for mass flow meters, initial calibration with stack gas has been performed. For subsequent calibrations, Y within ±5% of average value from the most recent 3-point calibration.	At 3 settings prior to initial use and at least quarterly at one setting thereafter.	Recalibrate meter at 3 settings to determine a new value of Y.
Temperature sensor calibration	Absolute temperature measured by sensor within ± 1.5% of a reference sensor.	Prior to initial use and at least quarterly thereafter.	Recalibrate; sensor may not be used until specification is met.
Barometer calibration	Absolute pressure measured by instrument within ± 10 mm Hg of reading with a NIST-traceable barometer.	Prior to initial use and at least quarterly thereafter.	Recalibrate; instrument may not be used until specification is met.

* * * * *

12.8.3 For the routine, day-to-day operation of the monitoring system, when one of the two sorbent trap samples or sampling systems either: (a) Fails the post-monitoring leak check; or (b) has excessive section 2 breakthrough; or (c) fails to maintain the proper stack flow-to-sample flow ratio; or (d) fails to achieve the required section 3 spike recovery; or (e) is lost, broken, or damaged, provided that the other trap meets the acceptance criteria for all four of these QC specifications, the Hg concentration measured by the valid trap may be multiplied by a factor of 1.111 and then used for reporting purposes. Further, if both traps meet the acceptance criteria for all four of these QC specifications, but the acceptance criterion for paired trap agreement is not met, the owner or operator may report the higher of the two Hg concentrations measured by the traps, in lieu of invalidating the data from the paired traps.

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Performance Specification 15—Performance Specification for Extractive FTIR Continuous Emission Monitoring Systems in Stationary Sources

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11.1.1.4.2 RMs Using a Grab Sampling Technique. Synchronize the RM and FTIR CEM measurements as closely as possible. For a grab sampling RM, record the volume collected and the exact sampling period for each sample. Synchronize the FTIR CEM so that the FTIR measures a spectrum of a similar cell volume at the same time as the RM grab sample was collected. Measure at least five independent samples with both the FTIR CEM and the RM for each of the minimum nine runs. Compare the run concentration averages by using the relative accuracy analysis procedure in Performance Specification 2 of appendix B of 40 CFR part 60.

11.1.1.4.3 Continuous Emission Monitors as RMs. If the RM is a CEM, synchronize the sampling flow rates of the RM and the FTIR CEM. Each run is at least 1 hour long and consists of at least 10 FTIR CEM measurements and the corresponding 10 RM measurements (or averages). For the statistical comparison, use the relative accuracy analysis procedure in Performance Specification 2 of appendix B of 40 CFR part 60. If the RM time constant is < ½ the FTIR CEM time constant, brief fluctuations in analyte concentrations that are not adequately measured with the slower FTIR CEM time constant can be excluded from the run average along with the corresponding RM measurements. However, the FTIR CEM run average must still include at least 10 measurements over a 1-hour period.

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Performance Specification 16—Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources

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6.1.7 Sensor Location and Repair. We recommend you install sensors in an accessible location in order to perform repairs and replacements. Permanently-installed platforms or ladders may not be needed. If you install sensors in an area that is not accessible, you may be required to shut down the emissions unit to repair or replace a sensor. Conduct a new RATA after replacing a sensor that supplies a critical PEMS parameter if the new sensor provides a different output or scaling or changes the historical training dataset of the PEMS. Replacement of a non-critical sensor that does not cause an impact in the accuracy of the PEMS does not trigger a RATA. All sensors must be calibrated as often as needed but at least as often as recommended by the manufacturers.

* * * * *

8.2.1 Reference Methods. Unless otherwise specified in the applicable regulations, you must use the test methods in appendix A of this part for the RM test. Conduct the RM tests at three operating levels. The RM tests shall be performed at a low-load (or production) level between the minimum safe, stable load and 50 percent of the maximum level load, at the mid-load level (an intermediary level between the low and high levels), and at a high-load level between 80 percent and the maximum load. Alternatively, if practicable, you may test at three levels of the key operating parameter (e.g. selected based on a covariance analysis between each parameter and the PEMS output) equally spaced within the normal range of the parameter.

* * * * *

9.1 QA/QC Summary. Conduct the applicable ongoing tests listed below.

ONGOING QUALITY ASSURANCE TESTS

Test	PEMS regulatory purpose	Acceptability	Frequency
Sensor Evaluation	All		Daily.
RAA	Compliance	3-test avg ≤10% of simultaneous analyzer or RM average.	Each quarter except quarter when RATA performed.
RATA	All	Same as for RA in Sec. 13.1	Yearly in quarter when RAA not performed.
Bias Correction	All	If $d_{avg} \leq \lvert cc \rvert$	Bias test passed (no correction factor needed).
PEMS Training	All	If $F_{critical} \geq F$ $r \geq 0.8$	Optional after initial and subsequent RATAs.

ONGOING QUALITY ASSURANCE TESTS—Continued

Test	PEMS regulatory purpose	Acceptability	Frequency
Sensor Evaluation Alert Test (optional).	All	See Section 6.1.8	After each PEMS training.

* * * * *

9.3 Quarterly Relative Accuracy Audits. In the first year of operation after the initial certification, perform a RAA consisting of at least three 30-minute portable analyzer or RM determinations each quarter a RATA is not performed. To conduct a RAA, follow the procedures in Section 8.2 for the relative accuracy test, except that only three sets of measurement data are required, and the statistical tests are not required. The average of the three or more portable analyzer or RM determinations must not exceed the limits given in Section 13.5. Report the data from all sets of measurement data. If a PEMS passes all quarterly RAAs in the first year and also passes the subsequent yearly RATA in the second year, you may elect to perform a single mid-year RAA in the second year in place of the quarterly RAAs. This option may be repeated, but only until the PEMS fails either a mid-year RAA or a yearly RATA. When such a failure occurs, you must resume quarterly RAAs in the quarter following the failure and continue conducting quarterly RAAs until the PEMS successfully passes both a year of quarterly RAAs and a subsequent RATA.

9.4 Yearly Relative Accuracy Test. Perform a minimum 9-run RATA at the normal operating level on a yearly basis in the quarter that the RAA is not performed. The statistical tests in Section 8.3 are not required for the yearly RATA.

* * * * *

12.4 Relative Accuracy Audit. Calculate the quarterly RAA using Equation 16–9.

$$RAA = \frac{\overline{PEMS} - \overline{RM}}{\overline{RM}} x\,100 \qquad \text{Eq. 16-9}$$

* * * * *

13.5 Relative Accuracy Audits. The average of the three portable analyzer or RM determinations must not differ from the simultaneous PEMS average value by more than 10 percent of the analyzer or RM for concentrations greater than 100 ppm or 20 percent for concentrations between 100 and 20 ppm, or the test is failed. For measurements at 20 ppm or less, this difference must not exceed 2 ppm for a pollutant PEMS and 1 percent absolute for a diluents PEMS.

* * * * *

■ 31. Amend appendix F to Part 60 as follows:

■ a. By revising Procedure 1, section 6.2.

■ b. By revising Procedure 2, paragraphs (3) and (4) of section 12.0.

■ c. By redesignating the second listing of section 6.2.6 as section 6.2.7 in Procedure 5.

Appendix F to Part 60—Quality Assurance Procedures

* * * * *

Procedure 1—Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination

* * * * *

6.2 RAA Accuracy Calculation. Use the calculation procedure in the relevant performance specification to calculate the accuracy for the RAA. The RAA must be calculated in the units of the applicable emission standard.

* * * * *

Procedure 2—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

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12.0 What calculations and data analysis must I perform for my PM CEMS?

* * * * *

(3) How do I calculate daily upscale and zero drift? You must calculate the upscale drift using Equation 2–2 and the zero drift using Equation 2–3:

$$UD = \frac{|R_{CEM} - R_U|}{FS} \times 100 \qquad \text{(Eq. 2-2)}$$

Where:

UD = The upscale drift of your PM CEMS, in percent,

R_{CEM} = Your PM CEMS response to the upscale check value, and

R_U = The upscale check value.

FS = Full-scale value.

$$ZD = \frac{|R_{CEM} - R_L|}{FS} \times 100 \qquad \text{(Eq. 2-3)}$$

Where:

ZD = The zero (low-level) drift of your PM CEMS, in percent,

R_{CEM} = Your PM CEMS response of the zero check value,

R_L = The zero check value.

(4) How do I calculate SVA accuracy? You must use Equation 2–4 to calculate the accuracy, in percent, for each of the three SVA tests or the daily sample volume check:

$$Accuracy = \frac{(V_R - V_M)}{V_R} \times 100 \qquad \text{(Eq. 2-4)}$$

Where:

V_M = Sample gas volume determined/reported by your PM CEMS (e.g., dscm),

V_R = Sample gas volume measured by the independent calibrated reference device (e.g., dscm) for the SVA or the reference value for the daily sample volume check.

Note: Before calculating SVA accuracy, you must correct the sample gas volumes measured by your PM CEMS and the independent calibrated reference device to the same basis of temperature, pressure, and moisture content. You must document all data and calculations.

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

■ 32. The authority citation for part 61 continues to read as follows:

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

Subpart A—[Amended]

■ 33. Amend § 61.13 by revising paragraph (e)(1)(i) to read as follows:

§ 61.13 Emission tests and waiver of emission tests.

* * * * *

(e) * * *

(1) * * *

(i) The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes. No audit samples are required for the following test methods: Methods 3A and 3C of appendix A–3 of part 60; Methods 6C, 7E, 9, and 10 of appendix A–4 of part 60; Method 18 and 19 of appendix A–6 of part 60; Methods 20, 22, and 25A of appendix A–7 of part 60; and Methods 303, 318, 320, and 321 of appendix A of part 63. If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test. The compliance authority responsible for the compliance test may waive the requirement to include an audit sample if they believe that an audit sample is not necessary. ''Commercially available'' means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, *www.epa.gov/ttn/emc*, to confirm whether there is a source that can supply an audit sample for that method. If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test. When ordering an audit sample, the source owner, operator, or representative shall give the sample provider an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the compliance authority. The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the compliance authority and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the compliance authority first and report to the AASP. If the method being audited is a method that allows the samples to be analyzed in the field and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the compliance authority is present at the testing site. The tester may request, and the compliance authority may grant, a waiver to the requirement that a representative of the compliance authority must be present at the testing site during the field analysis of an audit sample. The source owner, operator, or representative may report the results of the audit sample to the compliance authority and then report the results of the audit sample to the AASP prior to collecting any emission samples. The test protocol and final test report shall document whether an audit sample was ordered and utilized and the pass/fail results as applicable.

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Subpart C—[Amended]

■ 34. Amend § 61.33 by revising paragraph (a) to read as follows:

§ 61.33 Stack sampling.

(a) Unless a waiver of emission testing is obtained under § 61.13, each owner or operator required to comply with § 61.32(a) shall test emissions from the source according to Method 104 of appendix B to this part or according to Method 29 of appendix A to part 60. Method 103 of appendix B to this part is approved by the Administrator as an alternative method for sources subject to § 61.32(a). The emission test shall be performed:

(1) By May 28, 2014 in the case of an existing source or a new source which has an initial startup date preceding February 27, 2014; or

(2) Within 90 days of startup in the case of a new source which did not have an initial startup date preceding February 27, 2014.

* * * * *

Subpart D—[Amended]

■ 35. Amend § 61.42 by revising paragraph (a) to read as follows:

§ 61.42 Emission standard.

(a) Emissions to the atmosphere from rocket-motor test sites shall not cause time-weighted atmospheric concentrations of beryllium to exceed 75 microgram minutes per cubic meter (μg-min/m^3)(4.68 x 10^{-9} pound minutes per cubic foot (lb-min/ft^3)) of air within the limits of 10 to 60 minutes, accumulated during any 2 consecutive weeks, in any area in which an adverse effect to public health could occur.

* * * * *

Subpart E—[Amended]

■ 36. Amend § 61.53 by revising paragraph (d)(2) to read as follows:

§ 61.53 Stack sampling.

* * * * *

(d) * * *

(2) Method 101A in appendix B or Method 29 in appendix A to part 60 shall be used to test emissions as follows:

(i) The test shall be performed by May 28, 2014 in the case of an existing source or a new source which has an initial startup date preceding February 27, 2014.

(ii) The test shall be performed within 90 days of startup in the case of a new source which did not have an initial startup date preceding February 27, 2014.

* * * * *

Subpart N—[Amended]

■ 37. Amend § 61.164 as follows:

■ a. By revising paragraph (d)(2)(i).

■ b. By revising paragraph (e)(1)(i).

■ c. By revising paragraph (e)(2) to read as follows:

§ 61.164 Test methods and procedures.

* * * * *

(d) * * *

(2) * * *

(i) Use Method 108 in appendix B to this part or Method 29 in appendix A to part 60 for determining the arsenic

emission rate, g/hr (lb/hr). The emission rate shall equal the arithmetic mean of the results of three 60-minute test runs.

* * * * *

(e) * * *

(1) * * *

(i) Use Method 108 in appendix B to this part or Method 29 in appendix A to part 60 to determine the concentration of arsenic in the gas streams entering and exiting the control device. Conduct three 60-minute test runs, each consisting of simultaneous testing of the inlet and outlet gas streams. The gas streams shall contain all the gas exhausted from the glass melting furnace.

* * * * *

(2) Calculate the percent emission reduction for each run as follows:

$$D = \frac{(C_b - C_a)\, x\, 100}{C_b}$$

Where:

D = the percent emission reduction.

C_b = the arsenic concentration of the stack gas entering the control device, as measured by Method 108 or Method 29.

C_a = the arsenic concentration of the stack gas exiting the control device, as measured by Method 108 or Method 29.

* * * * *

■ 38. Amend appendix B to part 61 to read as follows:

■ a. By amending Method 101 by redesignating sections 16.0 and 17.0 as sections 17.0 and 18.0, respectively, and by adding a new section 16.0.

■ b. By amending Method 101A by redesignating sections 16.0 and 17.0 as sections 17.0 and 18.0, respectively, and by adding a new section 16.0.

■ c. By revising Method 102, section 8.1.1.1.

■ d. By amending Method 104 as follows:

■ i. By revising sections 4.1 and 11.5.3.

■ ii. By redesignating sections 16.0 and 17.0 as sections 17.0 and 18.0, respectively.

■ iii. By adding a new section 16.0.

■ e. By amending Method 108 by redesignating sections 16.0 and 17.0 as sections 17.0 and 18.0, respectively, and by adding a new section 16.0.

■ f. By amending Method 108A by redesignating sections 16.0 and 17.0 as sections 17.0 and 18.0 respectively, and by adding a new section 16.0.

Appendix B to Part 61—Test Methods

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Method 101—Determination of Particulate and Gaseous Mercury Emissions From Chlor-Alkali Plants (Air Streams)

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16.0 Alternative Procedures

16.1 Alternative Analyzer. Samples may also be analyzed by cold vapor atomic fluorescence spectrometry.

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Method 101A—Determination of Particulate and Gaseous Mercury Emissions From Sewage Sludge Incinerators

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16.0 Alternative Procedures

16.1 Alternative Analyzers.

16.1.1 Inductively coupled plasma-atomic emission spectrometry (ICP–AES) may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.1.1.1 Sample collection, sample preparation, and analytical preparation procedures are as defined in the method except as necessary for the ICP–AES application.

16.1.1.2 The quality control procedures are conducted as prescribed.

16.1.1.3 The limit of quantitation for the ICP–AES must be demonstrated and the sample concentrations reported should be no less than two times the limit of quantitation. The limit of quantitation is defined as ten times the standard deviation of the blank value. The standard deviation of the blank value is determined from the analysis of seven blanks. It has been reported that for mercury and those elements that form hydrides, a continuous-flow generator coupled to an ICP–AES offers detection limits comparable to cold vapor atomic absorption.

16.1.2 Samples may also be analyzed by cold vapor atomic fluorescence spectrometry.

* * * * *

Method 102—Determination of Particulate and Gaseous Mercury Emissions From Chlor-Alkali Plants (Hydrogen Streams)

* * * * *

8.1.1.1 Calibrate the meter box orifice. Use the techniques described in APTD–0576 (see Reference 9 in Section 17.0 of Method 5 of appendix A to part 60). Calibration of the orifice meter at flow conditions that simulate the conditions at the source is suggested. Calibration should either be done with hydrogen or with some other gas having a similar Reynolds Number so that there is similarity between the Reynolds Numbers during calibration and during sampling. Alternative mercury-free thermometers may be used if the thermometers are, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

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Method 104—Determination of Beryllium Emissions From Stationary Sources

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4.1 Matrix Effects. Analysis for Be by flame atomic absorption spectrophotometry is sensitive to the chemical composition and to the physical properties (*e.g.*, viscosity, pH) of the sample. Aluminum and silicon, in particular, are known to interfere when present in appreciable quantities. The analytical procedure includes (optionally) the use of the Method of Standard Additions to check for these matrix effects, and sample analysis using the Method of Standard Additions if significant matrix effects are found to be present (see Reference 2 in Section 17.0).

* * * * *

11.5.3 Check for Matrix Effects (optional). Use the Method of Standard Additions (see Reference 2 in Section 17.0) to check at least one sample from each source for matrix effects on the Be results. If the results of the Method of Standard Additions procedure used on the single source sample do not agree to within 5 percent of the value obtained by the routine atomic absorption analysis, then reanalyze all samples from the source using the Method of Standard Additions procedure.

* * * * *

16.0 Alternative Procedures

16.1 Inductively Coupled Plasma-Atomic Emission Spectrometry (ICP–AES) Analysis. ICP–AES may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.1.1 Sample collection, sample preparation, and analytical preparation procedures are as defined in the method except as necessary for the ICP–AES application.

16.1.2 Quality Assurance/Quality Control procedures, including audit material analysis, are conducted as prescribed in the method. The QA acceptance conditions must be met.

16.1.3 The limit of quantitation for the ICP–AES must be demonstrated and the sample concentrations reported should be no less than two times the limit of quantitation. The limit of quantitation is defined as ten times the standard deviation of the blank value. The standard deviation of the blank value is determined from the analysis of seven blanks. It has been reported that for mercury and those elements that form hydrides, a continuous-flow generator coupled to an ICP–AES offers detection limits comparable to cold vapor atomic absorption.

16.2 Inductively Coupled Plasma-Mass Spectrometry (ICP–MS) Analysis. ICP–MS may be used as an alternative to atomic absorption analysis.

16.3 Cold Vapor Atomic Fluorescence Spectrometry (CVAFS) Analysis. CVAFS may be used as an alternative to atomic absorption analysis.

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Method 108—Determination of Particulate and Gaseous Arsenic Emissions

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16.0 Alternative Procedures

16.1 Inductively coupled plasma-atomic emission spectrometry (ICP–AES) Analysis. ICP–AES may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.1.1 Sample collection, sample preparation, and analytical preparation procedures are as defined in the method

except as necessary for the ICP–AES application.

16.1.2 Quality Assurance/Quality Control procedures, including audit material analysis, are conducted as prescribed in the method. The QA acceptance conditions must be met.

16.1.3 The limit of quantitation for the ICP–AES must be demonstrated and the sample concentrations reported should be no less than two times the limit of quantitation. The limit of quantitation is defined as ten times the standard deviation of the blank value. The standard deviation of the blank value is determined from the analysis of seven blanks. It has been reported that for mercury and those elements that form hydrides, a continuous-flow generator coupled to an ICP–AES offers detection limits comparable to cold vapor atomic absorption.

16.2 Inductively Coupled Plasma-Mass Spectrometry (ICP–MS) Analysis. ICP–MS may be used as an alternative to atomic absorption analysis.

16.3 Cold Vapor Atomic Fluorescence Spectrometry (CVAFS) Analysis. CVAFS may be used as an alternative to atomic absorption analysis.

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Method 108A—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters

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16.0 Alternative Procedures

16.1 Alternative Analyzer. Inductively coupled plasma-atomic emission spectrometry (ICP–AES) may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.1.1 Sample collection, sample preparation, and analytical preparation procedures are as defined in the method except as necessary for the ICP–AES application.

16.1.2 Quality Assurance/Quality Control procedures, including audit material analysis, are conducted as prescribed in the method. The QA acceptance conditions must be met.

16.1.3 The limit of quantitation for the ICP–AES must be demonstrated and the sample concentrations reported should be no less than two times the limit of quantitation. The limit of quantitation is defined as ten times the standard deviation of the blank value. The standard deviation of the blank value is determined from the analysis of seven blanks. It has been reported that for mercury and those elements that form hydrides, a continuous-flow generator coupled to an ICP–AES offers detection limits comparable to cold vapor atomic absorption.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 39. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 40. Amend § 63.7 by revising paragraph (c)(2)(iii)(A) to read as follows:

§ 63.7 Performance testing requirements.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(A) The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes. No audit samples are required for the following test methods: Methods 3A and 3C of appendix A–3 of part 60; Methods 6C, 7E, 9, and 10 of appendix A–4 of part 60; Methods 18 and 19 of appendix A–6 of part 60; Methods 20, 22, and 25A of appendix A–7 of part 60; and Methods 303, 318, 320, and 321 of appendix A of part 63. If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test. The compliance authority responsible for the compliance test may waive the requirement to include an audit sample if they believe that an audit sample is not necessary. ''Commercially available'' means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, *www.epa.gov/ttn/emc*, to confirm whether there is a source that can supply an audit sample for that method. If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test. When ordering an audit sample, the source owner, operator, or representative shall give the sample provider an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the compliance authority. The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the compliance authority and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the compliance authority first and report to the AASP. If the method being audited is a method that allows the samples to be analyzed in the field and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the compliance authority is present at the testing site. The tester may request, and the compliance authority may grant, a waiver to the requirement that a representative of the compliance authority must be present at the testing site during the field analysis of an audit sample. The source owner, operator, or representative may report the results of the audit sample to the compliance authority and then report the results of the audit sample to the AASP prior to collecting any emission samples. The test protocol and final test report shall document whether an audit sample was ordered and utilized and the pass/fail results as applicable.

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■ 41. Amend § 63.8 by adding a sentence to the end of paragraph (f)(6)(iii) to read as follows:

§ 63.8 Monitoring requirements.

* * * * *

(f) * * *

(6) * * *

(iii) * * * The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 8.4 of Performance Specification 2.

* * * * *

■ 42. Revise § 63.14 to read as follows:

§ 63.14 Incorporations by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the EPA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St. SW., Washington, DC, telephone number 202–566, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For

information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) The Association of Florida Phosphate Chemists, P.O. Box 1645, Bartow, Florida 33830.

(1) Book of Methods Used and Adopted By The Association of Florida Phosphate Chemists, Seventh Edition 1991:

(i) Section IX, Methods of Analysis for Phosphate Rock, No. 1 Preparation of Sample, IBR approved for §§ 63.606(c) and 63.626(c).

(ii) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus—P_2O_5 or $Ca_3(PO_4)_2$, Method A—Volumetric Method, IBR approved for §§ 63.606(c) and 63.626(c).

(iii) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method B—Gravimetric Quimociac Method, IBR approved for §§ 63.606(c) and 63.626(c).

(iv) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus—P_2O_5 or $Ca_3(PO_4)_2$, Method C—Spectrophotometric Method, IBR approved for §§ 63.606(c) and 63.626(c).

(v) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method A—Volumetric Method, IBR approved for §§ 63.606(c) and 63.626(c) and (d).

(vi) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method B—Gravimetric Quimociac Method, IBR approved for §§ 63.606(c) and 63.626(c) and (d).

(vii) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method C—Spectrophotometric Method, IBR approved for §§ 63.606(c) and 63.626(c) and (d).

(2) [Reserved]

(c) Association of Official Analytical Chemists (AOAC) International, Customer Services, Suite 400, 2200 Wilson Boulevard, Arlington, Virginia 22201–3301, Telephone (703) 522–3032, Fax (703) 522–5468.

(1) AOAC Official Method 929.01 Sampling of Solid Fertilizers, Sixteenth edition, 1995, IBR approved for § 63.626(d).

(2) AOAC Official Method 929.02 Preparation of Fertilizer Sample, Sixteenth edition, 1995, IBR approved for § 63.626(d).

(3) AOAC Official Method 957.02 Phosphorus (Total) in Fertilizers, Preparation of Sample Solution, Sixteenth edition, 1995, IBR approved for § 63.626(d).

(4) AOAC Official Method 958.01 Phosphorus (Total) in Fertilizers, Spectrophotometric Molybdovanadophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(d).

(5) AOAC Official Method 962.02 Phosphorus (Total) in Fertilizers, Gravimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(d).

(6) AOAC Official Method 969.02 Phosphorus (Total) in Fertilizers, Alkalimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(d).

(7) AOAC Official Method 978.01 Phosphorus (Total) in Fertilizers, Automated Method, Sixteenth edition, 1995, IBR approved for § 63.626(d).

(d) American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005.

(1) API Publication 2517, Evaporative Loss from External Floating-Roof Tanks, Third Edition, February 1989, IBR approved for §§ 63.111 and 63.2406.

(2) API Publication 2518, Evaporative Loss from Fixed-roof Tanks, Second Edition, October 1991, IBR approved for § 63.150(g).

(3) API Manual of Petroleum Measurement Specifications (MPMS) Chapter 19.2 (API MPMS 19.2), Evaporative Loss From Floating-Roof Tanks, First Edition, April 1997, IBR approved for §§ 63.1251 and 63.12005.

(e) American Society of Heating, Refrigerating, and Air-Conditioning Engineers at 1791 Tullie Circle, NE., Atlanta, GA 30329 *orders@ashrae.org.*

(1) American Society of Heating, Refrigerating, and Air Conditioning Engineers Method 52.1, ''Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992,'' IBR approved for §§ 63.11173(e) and 63.11516(d).

(2) [Reserved]

(f) American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990, Telephone (800) 843–2763, *http://www.asme.org;* also available from HIS, Incorporated, 15 Inverness Way East, Englewood, CO 80112, Telephone (877) 413–5184, *http://global.ihs.com.*

(1) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, IBR approved for §§ 63.309(k), 63.457(k), 63.772(e) and (h), 63.865(b), 63.1282(d) and (g), 63.3166(a), 63.3360(e), 63.3545(a), 63.3555(a), 63.4166(a), 63.4362(a), 63.4766(a), 63.4965(a), 63.5160(d), table 4 to subpart UUUU, 63.9307(c), 63.9323(a), 63.11148(e), 63.11155(e), 63.11162(f), 63.11163(g), 63.11410(j), 63.11551(a), 63.11646(a), and 63.11945, table 5 to subpart DDDDD, table 4 to subpart JJJJJ, tables 4 and 5 of subpart UUUUU, and table 1 to subpart ZZZZZ.

(2) [Reserved]

(g) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959, Telephone (610) 832–9585, *http://www.astm.org;* also available from ProQuest, 789 East Eisenhower Parkway, Ann Arbor, MI 48106–1346, Telephone (734) 761–4700, *http://www.proquest.com.*

(1) ASTM D95–05 (Reapproved 2010), Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation, approved May 1, 2010, IBR approved for § 63.10005(i) and table 6 to subpart DDDDD.

(2) ASTM D240–09 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, approved July 1, 2009, IBR approved for table 6 to subpart DDDDD.

(3) ASTM Method D388–05, Standard Classification of Coals by Rank, approved September 15, 2005, IBR approved for §§ 63.7575, 63.10042, and 63.11237.

(4) ASTM Method D396–10, Standard Specification for Fuel Oils, including Appendix X1, approved October 1, 2010, IBR approved for § 63.10042.

(5) ASTM D396–10, Standard Specification for Fuel Oils, approved October 1, 2010, IBR approved for §§ 63.7575 and 63.11237.

(6) ASTM D523–89, Standard Test Method for Specular Gloss, IBR approved for § 63.782.

(7) ASTM D975–11b, Standard Specification for Diesel Fuel Oils, approved December 1, 2011, IBR approved for § 63.7575.

(8) ASTM D1193–77, Standard Specification for Reagent Water, IBR approved for appendix A to part 63: Method 306, Sections 7.1.1 and 7.4.2.

(9) ASTM D1193–91, Standard Specification for Reagent Water, IBR approved for appendix A to part 63: Method 306, Sections 7.1.1 and 7.4.2.

(10) ASTM D1331–89, Standard Test Methods for Surface and Interfacial Tension of Solutions of Surface Active Agents, IBR approved for appendix A to part 63: Method 306B, Sections 6.2, 11.1, and 12.2.2.

(11) ASTM D1475–90, Standard Test Method for Density of Paint, Varnish Lacquer, and Related Products, IBR approved for appendix A to subpart II.

(12) ASTM D1475–98 (Reapproved 2003), ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,'' IBR approved for §§ 63.3151(b), 63.3941(b) and (c), 63.3951(c), 63.4141(b) and (c), and 63.4551(c).

(13) ASTM Method D1835–05, Standard Specification for Liquefied Petroleum (LP) Gases, approved April 1, 2005, IBR approved for §§ 63.7575 and 63.11237.

(14) ASTM D1945–03 (Reapproved 2010), Standard Test Method for Analysis of Natural Gas by Gas Chromatography, (Approved January 1, 2010), IBR approved for §§ 63.772(h), and 63.1282(g).

(15) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for § 63.11(b).

(16) ASTM D1946–90 (Reapproved 1994), Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for § 63.11(b).

(17) ASTM D2013/D2013M–09, Standard Practice for Preparing Coal Samples for Analysis, (Approved November 1, 2009), IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(18) ASTM D2099–00, Standard Test Method for Dynamic Water Resistance of Shoe Upper Leather by the Maeser Water Penetration Tester, IBR approved for § 63.5350.

(19) ASTM D2216–05, Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass, IBR approved for the definition of ''Free organic liquids'' in § 63.10692.

(20) ASTM D2234/D2234M–10, Standard Practice for Collection of a Gross Sample of Coal, approved January 1, 2010, IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ .

(21) ASTM D2369–93, Standard Test Method for Volatile Content of Coatings, IBR approved for appendix A to subpart II.

(22) ASTM D2369–95, Standard Test Method for Volatile Content of Coatings, IBR approved for appendix A to subpart II.

(23) ASTM D2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved for § 63.11(b).

(24) ASTM D2382–88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved for § 63.11(b).

(25) ASTM D2697–86 (Reapproved 1998), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for §§ 63.3161(f), 63.3521(b), 63.3941(b), 63.4141(b), 63.4741(b), 63.4941(b), and 63.5160(c).

(26) ASTM D2879–83, Standard Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for §§ 63.111, 63.2406, and 63.12005.

(27) ASTM D2879–96, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, (Approved 1996), IBR approved for §§ 63.111, 63.2406, and 63.12005.

(28) ASTM D3173–03 (Reapproved 2008), Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, (Approved February 1, 2008), IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(29) ASTM D3257–93, Standard Test Methods for Aromatics in Mineral Spirits by Gas Chromatography, IBR approved for § 63.786(b).

(30) ASTM D3588–98 (Reapproved 2003), Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels, (Approved May 10, 2003), IBR approved for §§ 63.772(h) and 63.1282(g).

(31) ASTM D3695–88, Standard Test Method for Volatile Alcohols in Water by Direct Aqueous-Injection Gas Chromatography, IBR approved for § 63.365(e).

(32) ASTM D3792–91, Standard Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved for appendix A to subpart II.

(33) ASTM D3912–80, Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(34) ASTM D4006–11, Standard Test Method for Water in Crude Oil by Distillation, including Annex A1 and Appendix X1, (Approved June 1, 2011), IBR approved for § 63.10005(i) and table 6 to subpart DDDDD.

(35) ASTM D4017–81, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved for appendix A to subpart II.

(36) ASTM D4017–90, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved for appendix A to subpart II.

(37) ASTM D4017–96a, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved for appendix A to subpart II.

(38) ASTM D4057–06 (Reapproved 2011), Standard Practice for Manual Sampling of Petroleum and Petroleum Products, including Annex A1, (Approved June 1, 2011), IBR approved for § 63.10005(i) and table 6 to subpart DDDDD.

(39) ASTM D4082–89, Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(40) ASTM D4084–07, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), (Approved June 1, 2007), IBR approved for table 6 to subpart DDDDD.

(41) ASTM D4177–95 (Reapproved 2010), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, including Annexes A1 through A6 and Appendices X1 and X2, (Approved May 1, 2010), IBR approved for § 63.10005(i) and table 6 to subpart DDDDD.

(42) ASTM D4208–02 (Reapproved 2007), Standard Test Method for Total Chlorine in Coal by the Oxygen Bomb Combustion/Ion Selective Electrode Method, approved May 1, 2007, IBR approved for table 6 to subpart DDDDD.

(43) ASTM D4256–89, Standard Test Method for Determination of the Decontaminability of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(44) ASTM D4256–89 (Reapproved 94), Standard Test Method for Determination of the Decontaminability of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(45) ASTM D4606–03 (Reapproved 2007), Standard Test Method for Determination of Arsenic and Selenium in Coal by the Hydride Generation/Atomic Absorption Method, (Approved October 1, 2007), IBR approved for table 6 to subpart DDDDD.

(46) ASTM D4809–95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for § 63.11(b).

(47) ASTM D4891–89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, (Approved June 1, 2006), IBR approved for §§ 63.772(h) and 63.1282(g).

(48) ASTM D5066–91 (Reapproved 2001), Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-

Weight Basis, IBR approved for § 63.3161(g).

(49) ASTM D5087–02, Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement), IBR approved for § 63.3165(e) and appendix A to subpart IIII.

(50) ASTM D5192–09, Standard Practice for Collection of Coal Samples from Core, (Approved June 1, 2009), IBR approved for table 6 to subpart DDDDD.

(51) ASTM D5198–09, Standard Practice for Nitric Acid Digestion of Solid Waste, (Approved February 1, 2009), IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(52) ASTM D5228–92, Standard Test Method for Determination of Butane Working Capacity of Activated Carbon, (Reapproved 2005), IBR approved for § 63.11092(b).

(53) ASTM D5291–02, Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants, IBR approved for appendix A to subpart MMMM.

(54) ASTM D5790–95, Standard Test Method for Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry, IBR approved for Table 4 to subpart UUUU.

(55) ASTM D5864–11, Standard Test Method for Determining Aerobic Aquatic Biodegradation of Lubricants or Their Components, (Approved March 1, 2011), IBR approved for table 6 to subpart DDDDD.

(56) ASTM D5865–10a, Standard Test Method for Gross Calorific Value of Coal and Coke, (Approved May 1, 2010), IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(57) ASTM D5954–98 (Reapproved 2006), Test Method for Mercury Sampling and Measurement in Natural Gas by Atomic Absorption Spectroscopy, (Approved December 1, 2006), IBR approved for table 6 to subpart DDDDD.

(58) ASTM D5965–02, Standard Test Methods for Specific Gravity of Coating Powders, IBR approved for §§ 63.3151(b) and 63.3951(c).

(59) ASTM D6053–00, Standard Test Method for Determination of Volatile Organic Compound (VOC) Content of Electrical Insulating Varnishes, IBR approved for appendix A to subpart MMMM.

(60) ASTM D6093–97 (Reapproved 2003), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for §§ 63.3161, 63.3521, 63.3941, 63.4141, 63.4741(b), 63.4941(b), and 63.5160(c).

(61) ASTM D6266–00a, Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement), IBR approved for § 63.3165(e).

(62) ASTM D6323–98 (Reapproved 2003), Standard Guide for Laboratory Subsampling of Media Related to Waste Management Activities, (Approved August 10, 2003), IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(63) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, IBR approved for §§ 63.457(b) and 63.1349, table 4 to subpart DDDD, table 4 to subpart ZZZZ, and table 8 to subpart HHHHHHH.

(64) ASTM D6348–03 (Reapproved 2010), Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, including Annexes A1 through A8, (Approved October 1, 2010), IBR approved for tables 1, 2, and 5 to subpart UUUUU and appendix B to subpart UUUUU.

(65) ASTM D6350–98 (Reapproved 2003), Standard Test Method for Mercury Sampling and Analysis in Natural Gas by Atomic Fluorescence Spectroscopy, (Approved May 10, 2003), IBR approved for table 6 to subpart DDDDD.

(66) ASTM D6357–11, Test Methods for Determination of Trace Elements in Coal, Coke, and Combustion Residues from Coal Utilization Processes by Inductively Coupled Plasma Atomic Emission Spectrometry, (Approved April 1, 2011), IBR approved for table 6 to subpart DDDDD.

(67) ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, IBR approved for §§ 63.5799, 63.5850, and Table 4 of Subpart UUUU.

(68) ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, (Approved October 1, 2004), IBR approved for §§ 63.457(b), 63.485(g), 60.485a(g), 63.772(a), 63.772(e), 63.1282(a) and (d), 63.2351(b), and 63.2354(b), and table 8 to subpart HHHHHHH.

(69) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, IBR approved for § 63.9307(c).

(70) ASTM D6522–00 (Reapproved 2005), Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, (Approved October 1, 2005), IBR approved for table 4 to subpart ZZZZ, table 5 to subpart DDDDDD, table 4 to subpart JJJJJJ, and §§ 63.772(e) and (h)) and 63.1282(d) and (g).

(71) ASTM D6721–01 (Reapproved 2006), Standard Test Method for Determination of Chlorine in Coal by Oxidative Hydrolysis Microcoulometry, (Approved April 1, 2006), IBR approved for table 6 to subpart DDDDD.

(72) ASTM D6722–01 (Reapproved 2006), Standard Test Method for Total Mercury in Coal and Coal Combustion Residues by the Direct Combustion Analysis, (Approved April 1, 2006), IBR approved for Table 6 to subpart DDDDD and Table 5 to subpart JJJJJJ.

(73) ASTM D6751–11b, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, (Approved July 15, 2011), IBR approved for §§ 63.7575 and 63.11237.

(74) 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 §§ 63.11646(a), 63.11647(a) and (d), tables 1, 2, 5, 11, 12t, and 13 to subpart DDDDD, table 4 to subpart JJJJJJ, table 5 to subpart UUUUU, and appendix A to subpart UUUUU.

(75) ASTM D6883–04, Standard Practice for Manual Sampling of Stationary Coal from Railroad Cars, Barges, Trucks, or Stockpiles, (Approved June 1, 2004), IBR approved for table 6 to subpart DDDDD.

(76) ASTM D7430–11ae1, Standard Practice for Mechanical Sampling of Coal, (Approved October 1, 2011), IBR approved for table 6 to subpart DDDDD.

(77) ASTM E145–94 (Reapproved 2001), Standard Specification for Gravity-Convection and Forced-Ventilation Ovens, IBR approved for appendix A to subpart PPPP.

(78) ASTM E180–93, Standard Practice for Determining the Precision of

ASTM Methods for Analysis and Testing of Industrial Chemicals, IBR approved for § 63.786(b).

(79) ASTM E260–91, General Practice for Packed Column Gas Chromatography, IBR approved for §§ 63.750(b) and 63.786(b).

(80) ASTM E260–96, General Practice for Packed Column Gas Chromatography, IBR approved for §§ 63.750(b) and 63.786(b).

(81) ASTM E515–95 (Reapproved 2000), Standard Test Method for Leaks Using Bubble Emission Techniques, IBR approved for § 63.425(i).

(82) ASTM E711–87 (Reapproved 2004), Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, (Approved August 28, 1987), IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(83) ASTM E776–87 (Reapproved 2009), Standard Test Method for Forms of Chlorine in Refuse-Derived Fuel, (Approved July 1, 2009), IBR approved for table 6 to subpart DDDDD.

(84) ASTM E871–82 (Reapproved 2006), Standard Test Method for Moisture Analysis of Particulate Wood Fuels, (Approved November 1, 2006), IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(h) Bay Area Air Quality Management District (BAAQMD), 939 Ellis Street, San Francisco, California 94109, *http://www.arb.ca.gov/DRDB/BA/CURHTML/ST/st30.pdf.*

(1) ''BAAQMD Source Test Procedure ST–30—Static Pressure Integrity Test, Underground Storage Tanks,'' adopted November 30, 1983, and amended December 21, 1994, IBR approved for § 63.11120(a).

(2) [Reserved]

(i) British Standards Institute, 389 Chiswick High Road, London W4 4AL, United Kingdom.

(1) BS EN 1593:1999, Non-destructive Testing: Leak Testing—Bubble Emission Techniques, IBR approved for § 63.425(i).

(2) [Reserved]

(j) California Air Resources Board (CARB), Engineering and Certification Branch, 1001 I Street, P.O. Box 2815, Sacramento, CA 95812–2815, Telephone (916) 327–0900, *http://www.arb.ca.gov/vapor/vapor.htm.*

(1) California Air Resources Board Vapor Recovery Test Procedure TP–201.1—''Volumetric Efficiency for Phase I Vapor Recovery Systems,'' adopted April 12, 1996, and amended February 1, 2001 and October 8, 2003, IBR approved for § 63.11120(b).

(2) California Air Resources Board Vapor Recovery Test Procedure TP–201.1E—''Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves,'' adopted October 8, 2003, IBR approved for § 63.11120(a).

(3) California Air Resources Board Vapor Recovery Test Procedure TP–201.3—''Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities,'' adopted April 12, 1996 and amended March 17, 1999, IBR approved for § 63.11120(a).

(k) Environmental Protection Agency. Air and Radiation Docket and Information Center, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone number (202) 566–1745.

(1) *California Regulatory Requirements Applicable to the Air Toxics Program,* November 16, 2010, IBR approved for § 63.99(a).

(2) New Jersey's *Toxic Catastrophe Prevention Act Program,* (July 20, 1998), IBR approved for § 63.99(a).

(3) Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Accidental Release Prevention Regulation, sections 1 through 5 and sections 7 through 14, effective January 11, 1999, IBR approved for § 63.99(a).

(4) State of Delaware Regulations Governing the Control of Air Pollution (October 2000), IBR approved for § 63.99(a).

(5) Massachusetts Department of Environmental Protection regulations at 310 CMR 7.26(10)–(16), Air Pollution Control, effective as of September 5, 2008, corrected March 6, 2009, and 310 CMR 70.00, Environmental Results Program Certification, effective as of December 28, 2007. IBR approved for § 63.99(a).

(6)(i) New Hampshire Regulations Applicable to Hazardous Air Pollutants, March, 2003. IBR approved for § 63.99(a).

(ii) New Hampshire Regulations Applicable to Hazardous Air Pollutants, September 2006. IBR approved for § 63.99(a).

(7) Maine Department of Environmental Protection regulations at Chapter 125, Perchloroethylene Dry Cleaner Regulation, effective as of June 2, 1991, last amended on June 24, 2009. IBR approved for § 63.99(a).

(8) California South Coast Air Quality Management District's ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989,'' IBR approved for §§ 63.11173(e) and 63.11516(d).

(9) California South Coast Air Quality Management District's ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002,'' Revision 0, IBR approved for §§ 63.11173(e) and 63.11516(d).

(10) Rhode Island Department of Environmental Management regulations at Air Pollution Control Regulation No. 36, Control of Emissions from Organic Solvent Cleaning, effective April 8, 1996, last amended October 9, 2008, IBR approved for § 63.99(a).

(11) Rhode Island Air Pollution Control, General Definitions Regulation, effective July 19, 2007, last amended October 9, 2008. IBR approved for § 63.99(a).

(12) Alaska Statute 42.45.045. Renewable energy grant fund and recommendation program, available at *http://www.legis.state.ak.us/basis/folio.asp*, IBR approved for § 63.6675.

(l) U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 272–0167, *http://www.epa.gov.*

(1) EPA–453/R–01–005, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Integrated Iron and Steel Plants—Background Information for Proposed Standards, Final Report, January 2001, IBR approved for § 63.7491(g).

(2) EPA–454/R–98–015, Office Of Air Quality Planning And Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997, IBR approved for §§ 63.548(e), 63.7525(j), and 63.11224(f).

(3) SW–846–3020A, Acid Digestion of Aqueous Samples And Extracts For Total Metals For Analysis By GFAA Spectroscopy, Revision 1, July 1992, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(4) SW–846–3050B, Acid Digestion of Sediments, Sludges, and Soils, Revision 2, December 1996, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(5) SW–846–7470A, Mercury In Liquid Waste (Manual Cold-Vapor Technique), Revision 1, September 1994, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(6) SW–846–7471B, Mercury In Solid Or Semisolid Waste (Manual Cold-Vapor Technique), Revision 2, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,

Third Edition, IBR approved for table 6 to subpart DDDDD and table 5 to subpart JJJJJJ.

(7) SW–846–8015C, Nonhalogenated Organics by Gas Chromatography, Revision 3, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.11960, 63.11980, and table 10 to subpart HHHHHHH.

(8) SW–846–8260B, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 2, December 1996, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.11960, 63.11980, and table 10 to subpart HHHHHHH.

(9) SW–846–8270D, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 4, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.11960, 63.11980, and table 10 to subpart HHHHHHH.

(10) SW–846–8315A, Determination of Carbonyl Compounds by High Performance Liquid Chromatography (HPLC), Revision 1, December 1996, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.11960 and 63.11980, and table 10 to subpart HHHHHHH.

(11) SW–846–5050, Bomb Preparation Method for Solid Waste, Revision 0, September 1994, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition IBR approved for table 6 to subpart DDDDD.

(12) SW–846–6010C, Inductively Coupled Plasma-Atomic Emission Spectrometry, Revision 3, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for table 6 to subpart DDDDD.

(13) SW–846–6020A, Inductively Coupled Plasma-Mass Spectrometry, Revision 1, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for table 6 to subpart DDDDD.

(14) SW–846–7060A, Arsenic (Atomic Absorption, Furnace Technique), Revision 1, September 1994, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for table 6 to subpart DDDDD.

(15) SW–846–7740, Selenium (Atomic Absorption, Furnace Technique), Revision 0, September 1986, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for table 6 to subpart DDDDD.

(16) SW–846–9056, Determination of Inorganic Anions by Ion Chromatography, Revision 1, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for table 6 to subpart DDDDD.

(17) SW–846–9076, Test Method for Total Chlorine in New and Used Petroleum Products by Oxidative Combustion and Microcoulometry, Revision 0, September 1994, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for table 6 to subpart DDDDD.

(18) SW–846–9250, Chloride (Colorimetric, Automated Ferricyanide AAI), Revision 0, September 1986, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for table 6 to subpart DDDDD.

(19) Method 200.8, Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma—Mass Spectrometry, Revision 5.4, 1994, IBR approved for table 6 to subpart DDDDD.

(20) Method 1631 Revision E, Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Absorption Fluorescence Spectrometry, Revision E, EPA–821–R–02–019, August 2002, IBR approved for table 6 to subpart DDDDD.

(m) 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.*

(1) ISO 6978–1:2003(E), Natural Gas—Determination of Mercury—Part 1: Sampling of Mercury by Chemisorption on Iodine, First edition, October 15, 2003, IBR approved for table 6 to subpart DDDDD.

(2) ISO 6978–2:2003(E), Natural gas—Determination of Mercury—Part 2: Sampling of Mercury by Amalgamation on Gold/Platinum Alloy, First edition, October 15, 2003, IBR approved for table 6 to subpart DDDDD.

(n) National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI), P.O. Box 133318, Research Triangle Park, NC 27709–3318 or at *http://www.ncasi.org.*

(1) NCASI Method DI/MEOH–94.03, Methanol in Process Liquids and Wastewaters by GC/FID, Issued May 2000, IBR approved for §§ 63.457 and 63.459.

(2) NCASI Method CI/WP–98.01, Chilled Impinger Method For Use At Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol, 1998, Methods Manual, IBR approved for table 4 to subpart DDDD.

(3) NCASI Method DI/HAPS–99.01, Selected HAPs In Condensates by GC/FID, Issued February 2000, IBR approved for § 63.459(b).

(4) NCASI Method IM/CAN/WP–99.02, Impinger/Canister Source Sampling Method for Selected HAPs and Other Compounds at Wood Products Facilities, January 2004, Methods Manual, IBR approved for table 4 to subpart DDDD.

(5) NCASI Method ISS/FP A105.01, Impinger Source Sampling Method for Selected Aldehydes, Ketones, and Polar Compounds, December 2005, Methods Manual, IBR approved for table 4 to subpart DDDD.

(o) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

(1) Handbook 44, Specificiations, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices 1998, IBR approved for § 63.1303(e).

(2) ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, Third Edition. (A suffix of ''A'' in the method number indicates revision one (the method has been revised once). A suffix of ''B'' in the method number indicates revision two (the method has been revised twice).

(i) Method 0023A, ''Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources,'' dated December 1996, IBR approved for § 63.1208(b).

(ii) Method 9071B, ''n-Hexane Extractable Material (HEM) for Sludge, Sediment, and Solid Samples,'' dated April 1998, IBR approved for § 63.7824(e).

(iii) Method 9095A, ''Paint Filter Liquids Test,'' dated December 1996, IBR approved for §§ 63.7700(b) and 63.7765.

(iv) Method 9095B, ''Paint Filter Liquids Test,'' (revision 2), dated November 2004, IBR approved for the definition of ''Free organic liquids'' in §§ 63.10692, 63.10885(a), and the definition of ''Free liquids'' in § 63.10906.

(v) SW–846 74741B, Revision 2, ''Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique),'' February 2007, IBR approved for § 63.11647(f).

(3) National Institute of Occupational Safety and Health (NIOSH) test method compendium, ''NIOSH Manual of Analytical Methods,'' NIOSH publication no. 94–113, Fourth Edition, August 15, 1994.

(i) NIOSH Method 2010, ''Amines, Aliphatic,'' Issue 2, August 15, 1994, IBR approved for § 63.7732(g).

(ii) [Reserved]

(p) North American Electric Reliability Corporation, 1325 G Street, NW., Suite 600, Washington, DC 20005–3801, *http://www.nerc.com, http://www.nerc.com/files/EOP0002-3_1.pdf.*

(1) North American Electric Reliability Corporation Reliability Standard EOP–002–3, Capacity and Energy Emergencies, adopted August 5, 2010, IBR approved for § 63.6640(f).

(2)[Reserved]

(q) Technical Association of the Pulp and Paper Industry (TAPPI), 15 Technology Parkway South, Norcross, GA 30092, (800) 332–8686, *http://www.tappi.org.*

(1) TAPPI T 266, Determination of Sodium, Calcium, Copper, Iron, and Manganese in Pulp and Paper by Atomic Absorption Spectroscopy (Reaffirmation of T 266 om-02), Draft No. 2, July 2006, IBR approved for table 6 to subpart DDDDD.

(2) [Reserved]

(r) Texas Commission on Environmental Quality (TCEQ) Library, Post Office Box 13087, Austin, Texas 78711–3087, telephone number (512) 239–0028, *http://www.tceq.state.tx.us/assets/public/implementation/air/sip/sipdocs/2002-12-HGB/02046sipapp_ado.pdf.*

(1) ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, January 31, 2003, IBR approved for §§ 63.654 and 63.11920.

(2) [Reserved]

Subpart G—[Amended]

■ 43. Amend § 63.144 by adding paragraphs (b)(5)(i)(G) and (H) to read as follows:

§ 63.144 Process wastewater provisions—test methods and procedures for determining applicability and Group 1/Group 2 determinations (determining which wastewater streams require control).

* * * * *

(b) * * *

(5) * * *

(i) * * *

(G) *Method 8260B.* Use procedures specified in Method 8260B in the SW–846 Compendium of Methods.

(H) *Method 316.* Use Method 316 to determine formaldehyde concentration.

* * * * *

Subpart N—[Amended]

■ 44. Amend § 63.344 by adding paragraph (c)(5) to read as follows:

§ 63.344 Performance test requirements and test methods.

* * * * *

(c) * * *

(5) The South Coast Air Quality Management District (SCAQMD) Method 205.1 (which is available by contacting the South Coast AQMD, 21865 Copley Dr, Diamond Bar, CA 91765) may be used to determine the total chromium concentration from hard and decorative chromium electroplating tanks and chromium anodizing tanks.

* * * * *

Subpart O—[Amended]

■ 45. Amend § 63.364 by revising paragraph (e) to read as follows:

§ 63.364 Monitoring requirements.

* * * * *

(e) Measure and record once per hour the ethylene oxide concentration at the outlet to the atmosphere after any control device according to the procedures specified in § 63.365(c)(1). The owner or operator shall compute and record a 24-hour average daily. The owner or operator will install, calibrate, operate, and maintain a monitor consistent with the requirements of performance specification (PS) 8 or 9 in 40 CFR part 60, appendix B, to measure ethylene oxide. The daily calibration requirements of section 7.2 of PS–9 or Section 13.1 of PS–8 are required only on days when ethylene oxide emissions are vented to the control device.

* * * * *

■ 46. Amend § 63.365 by revising the introductory text of paragraph (b) to read as follows:

§ 63.365 Test methods and procedures.

* * * * *

(b) *Efficiency at the sterilization chamber vent.* California Air Resources Board (CARB) Method 431 or the following procedures shall be used to determine the efficiency of all types of control devices used to comply with § 63.362(c), sterilization chamber vent standard.

* * * * *

Subpart Y—[Amended]

■ 47. Amend § 63.565 by revising paragraphs (d)(5), (8), and (10) and (g) to read as follows:

§ 63.565 Test methods and procedures.

* * * * *

(d) * * *

(5) *Recovery devices.* The average VOC concentration in the vent upstream and downstream of the control device shall be determined using Method 25A or 25B of appendix A–7 to part 60 of this chapter for recovery devices. The average VOC concentration shall correspond to the volume measurement by taking into account the sampling system response time.

* * * * *

(8) Where Method 25, 25A, or 25B is used to measure the percent reduction in VOC, the percent reduction across the combustion or recovery device shall be calculated as follows:

$$R = \frac{E_i - E_o}{E_i}(100\%)$$

Where:

R = control efficiency of control device, percent.

E_i = mass flow rate of VOC at the inlet to the combustion or recovery device as calculated under paragraph (c)(7) of this section, kg/hr.

E_o = mass flow rate of VOC at the outlet of the combustion or recovery device, as calculated under paragraph (c)(7) of this section, kg/hr.

* * * * *

(10) Use of methods other than Method 25, 25A, or 25B shall be validated pursuant to Method 301 of appendix A to part 63 of this chapter.

* * * * *

(g) *Baseline outlet VOC concentration.* The procedures in this paragraph shall be used to determine the outlet VOC concentration required in § 63.563(b)(4), (6), (7), and (8) for combustion devices except flare, carbon adsorbers, condenser/refrigeration units, and absorbers, respectively, and to monitor the VOC concentration as required in § 63.564(e), (g), (h), and (i). The owner or operator shall use the procedures outlined in Method 25A or 25B. For the baseline VOC concentration, the arithmetic average of the outlet VOC concentration from three test runs from paragraph (d) of this section shall be calculated for the control device. The VOC concentration shall be measured at least every 15 minutes. Compliance testing of VOC CEMS shall be performed using PS 8.

* * * * *

Subpart GG—[Amended]

■ 48. Amend § 63.750 by revising paragraph (o) to read as follows:

§ 63.750 Test methods and procedures.

* * * * *

(o) *Inorganic HAP emissions—dry particulate filter certification requirements.* Dry particulate filters used to comply with § 63.745(g)(2) or § 63.746(b)(4) must be certified by the filter manufacturer or distributor, paint/depainting booth supplier, and/or the facility owner or operator using method 319 in appendix A of this part, to meet or exceed the efficiency data points found in Tables 1 and 2, or 3 and 4 of § 63.745 for existing or new sources respectively.

Subpart GGG—[Amended]

■ 49. Amend § 63.1251 by revising the definition of ''Process vent'' to read as follows:

§ 63.1251 Definitions.

* * * * *

Process vent means a vent from a unit operation or vents from multiple unit operations within a process that are manifolded together into a common header, through which a HAP-containing gas stream is, or has the potential to be, released to the atmosphere. Examples of process vents include, but are not limited to, vents on condensers used for product recovery, bottom receivers, surge control vessels, reactors, filters, centrifuges, and process tanks. Emission streams that are undiluted and uncontrolled containing less than 50 ppmv HAP, as determined through process knowledge that no HAP are present in the emission stream or using an engineering assessment as discussed in § 63.1257(d)(2)(ii); test data using Method 18 of 40 CFR part 60, appendix A–6; Method 320 of 40 CFR part 63; or any other test method that has been validated according to the procedures in Method 301 of appendix A of this part, are not considered process vents. Process vents do not include vents on storage tanks regulated under § 63.1253, vents on wastewater emission sources regulated under § 63.1256, or pieces of equipment regulated under § 63.1255.

* * * * *

Subpart RRR—[Amended]

■ 50. Amend § 63.1511 by revising paragraph (c)(9) as to read follows:

§ 63.1511 Performance test/compliance demonstration general requirements.

* * * * *

(c) * * *

(9) Method 26A for the concentration of HCl. Where a lime-injected fabric filter is used as the control device to comply with the 90 percent reduction standard, the owner or operator must measure the fabric filter inlet concentration of HCl at a point before lime is introduced to the system. Method 26 may be used in place of Method 26A where it can be demonstrated that there are no water droplets in the emission stream. This can be demonstrated by showing that the vapor pressure of water in the emission stream that you are testing is less than the equilibrium vapor pressure of water at the emission stream temperature, and by certifying that the emission stream is not controlled by a wet scrubber.

* * * * *

Subpart CCCC—[Amended]

■ 51. Revise Table 2 to subpart CCCC to read as follows:

As stated in § 63.2161, if you demonstrate compliance by monitoring brew ethanol, you must comply with the requirements for performance tests in the following table:

TABLE 2 TO SUBPART CCCC OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

[Brew Ethanol Monitoring Only]

For each fed-batch fermenter for which compliance is determined by monitoring brew ethanol concentration and calculating VOC concentration in the fermenter exhaust according to the procedures in § 63.2161, you must . . .	Using . . .	According to the following requirements . . .
1. Measure VOC as propane	Method 25A*, or an alternative validated by EPA Method 301* and approved by the Administrator.	You must measure the VOC concentration in the fermenter exhaust at any point prior to the dilution of the exhaust stream.

* EPA Test Methods found in Appendix A of 40 CFR part 60.

Subpart UUUU—[Amended]

■ 52. Revise Table 4 to subpart UUUU to read as follows:

As required in §§ 63.5530(b) and 63.5535(a), (b), (g)(1), and (h)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table:

TABLE 4 TO SUBPART UUUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
1. the sum of all process vents.	a. each existing or new affected source.	i. select sampling port's location and the number of traverse points;	EPA Method 1 or 1A in appendix A to 40 CFR § 63.7(d)(1)(i);	sampling sites must be located at the inlet and outlet to each control device;
		ii. determine velocity and volumetric flow rate;	EPA Method 2, 2A, 2C, 2D, 2F, or 2G in appendices A–1 and A–2 to part 60 of this chapter;	you may use EPA Method 2A, 2C, 2D, 2F, or 2G as an alternative to using EPA Method 2, as appropriate;

TABLE 4 TO SUBPART UUUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
		iii. conduct gas analysis; and,	(1) EPA Method 3, 3A, or 3B in appendix A–2 to part 60 of this chapter; or,	you may use EPA Method 3A or 3B as an alternative to using EPA Method 3; or,
			(2) ASME PTC 19.10–1981—Part 10; and,	you may use ASME PTC 19.10–1981—Part 10 (available for purchase from Three Park Avenue, New York, NY 10016–5990) as an alternative to using EPA Method 3B.
		iv. measure moisture content of the stack gas.	EPA Method 4 in appendix A–3 to part 60 of this chapter.	
2. the sum of all viscose process vents.	a. each existing or new viscose process source.	i. measure total sulfide emissions.	(1) EPA Method 15 in appendix A–5 to part 60 of this chapter; or	(a) you must conduct testing of emissions at the inlet and outlet of each control device;
				(b) you must conduct testing of emissions from continuous viscose process vents and combinations of batch and continuous viscose process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535;
				(c) you must conduct testing of emissions from batch viscose process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and
				(d) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration; or
			(2) carbon disulfide and/or hydrogen sulfide CEMS, as applicable;	(a) you must measure emissions at the inlet and outlet of each control device using CEMS;
				(b) you must install, operate, and maintain the CEMS according to the applicable performance specification (PS–7, PS–8, PS–9, or PS–15) of 40 CFR part 60, appendix B; and
				(c) you must collect CEMS emissions data at the inlet and outlet of each control device during the period of the initial compliance demonstration and determine the CEMS operating limit during the period of the initial compliance demonstration.
3. the sum of all solvent coating process vents.	a. each existing or new cellophane operation.	i. measure toluene emissions.	(1) EPA Method 18 in appendix A–6 to part 60 of this chapter, or Method 320 in appendix A to part 63, or	(a) you must conduct testing of emissions at the inlet and outlet of each control device;
				(b) you may use EPA Method 18 or 320 to determine the control efficiency of any control device for organic compounds; for a combustion device, you must use only HAP that are present in the inlet to the control device to characterize the percent reduction across the combustion device;
				(c) you must conduct testing of emissions from continuous solvent coating process vents and combinations of batch and continuous solvent coating process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535;

TABLE 4 TO SUBPART UUUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(d) you must conduct testing of emissions from batch solvent coating process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the initial compliance demonstration; or
			(2) ASTM D6420–99 ..	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use ASTM D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 18 only where: the target compound(s) are those listed in Section 1.1 of ASTM D6420–99; and the target concentration is between 150 parts per billion by volume (ppbv) and 100 ppmv; for target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble; and for target compound(s) not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply; (c) you must conduct testing of emissions from continuous solvent coating process vents and combinations of batch and continuous solvent coating process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch solvent coating process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and, (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration.
4. the sum of all cellulose ether process vents.	a. each existing or new cellulose ether operation.	i. measure total organic HAP emissions.	(1) EPA Method 18 in appendix A–6 to part 60 of this chapter or Method 320 in appendix A to part 63, or	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 18 or 320 to determine the control efficiency of any control device for organic compounds; for a combustion device, you must use only HAP that are present in the inlet to the control device to characterize the percent reduction across the combustion device;

TABLE 4 TO SUBPART UUUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test;
			(2) ASTM D6420–99 ..	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use ASTM D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 18 only where: the target compound(s) are those listed in Section 1.1 of ASTM D6420–99; and the target concentration is between 150 ppbv and 100 ppmv; for target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble; and for target compound(s) not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply; target concentration is between 150 ppbv and 100 ppmv for target compound(s). (c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test.
			(3) EPA Method 25 in appendix A–7 to part 60 of this chapter; or	(a) you must conduct testing of emissions at the inlet and outlet of each control device;

TABLE 4 TO SUBPART UUUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(b) you may use EPA Method 25 to determine the control efficiency of combustion devices for organic compounds; you may not use EPA Method 25 to determine the control efficiency of noncombustion control devices; (c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test; or
			(4) EPA Method 25A in appendix A–7 to part 60 of this chapter	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 25A if: an exhaust gas volatile organic matter concentration of 50 ppmv or less is required in order to comply with the emission limit; the volatile organic matter concentration at the inlet to the control device and the required level of control are such as to result in exhaust volatile organic matter concentrations of 50 ppmv or less; or because of the high control efficiency of the control device, the anticipated volatile organic matter concentration at the control device exhaust is 50 ppmv or less, regardless of the inlet concentration; (c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and, (e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test.
5. each toluene storage vessel.	a. each existing or new cellophane operation.	i. measure toluene emissions.	(1) EPA Method 18 in appendix A–6 to part 60 of this chapter or Method 320 in appendix A to part 63; or	(a) if venting to a control device to reduce emissions, you must conduct testing of emissions at the inlet and outlet of each control device;

TABLE 4 TO SUBPART UUUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(b) you may use EPA Method 18 or 320 to determine the control efficiency of any control device for organic compounds; for a combustion device, you must use only HAP that are present in the inlet to the control device to characterize the percent reduction across the combustion device; (c) you must conduct testing of emissions from continuous storage vessel vents and combinations of batch and continuous storage vessel vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535 for continuous process vents; (d) you must conduct testing of emissions from batch storage vessel vents as specified in § 63.490(c) for batch process vents, except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and, (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration; or
			(2) ASTM D6420–99 ..	(a) if venting to a control device to reduce emissions, you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use ASTM D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 18 only where: the target compound(s) are those listed in Section 1.1 of ASTM D6420–99, and the target concentration is between 150 ppbv and 100 ppmv; for target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble; and for target compound(s) not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply; (c) you must conduct testing of emissions from continuous storage vessel vents and combinations of batch and continuous storage vessel vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535 for continuous process vents; (d) you must conduct testing of emissions from batch storage vessel vents as specified in § 63.490(c) for batch process vents, except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and,

TABLE 4 TO SUBPART UUUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	at . . .	you must . . .	using . . .	according to the following requirements . . .
				(e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration.
6. the sum of all process vents controlled using a flare.	a. each existing or new affected source.	i. measure visible emissions.	(1) EPA Method 22 in appendix A–7 to part 60 of this chapter.	(a) you must conduct the flare visible emissions test according to § 63.11(b).
7. equipment leaks	a. each existing or new cellulose ether operation.	i. measure leak rate ...	(1) applicable equipment leak test methods in § 63.180; or	(a) you must follow all requirements for the applicable equipment leak test methods in § 63.180; or
			(2) applicable equipment leak test methods in § 63.1023	(a) you must follow all requirements for the applicable equipment leak test methods in § 63.1023.
8. all sources of wastewater emissions.	a. each existing or new cellulose ether operation.	i. measure wastewater HAP emissions.	(1) applicable wastewater test methods and procedures in §§ 63.144 and 63.145; or	(a) You must follow all requirements for the applicable wastewater test methods and procedures in §§ 63.144 and 63.145; or
			(2) applicable wastewater test methods and procedures in §§ 63.144 and 63.145, using ASTM D5790–95 as an alternative to EPA Method 624 in appendix A to part 163 of this chapter.	(a) you must follow all requirements for the applicable waste water test methods and procedures in §§ 63.144 and 63.145, except that you may use ASTM D5790–95 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 624, under the condition that this ASTM method be used with the sampling procedures of EPA Method 25D or an equivalent method.
9. any emission point	a. each existing or new affected source using a CEMS to demonstrate compliance.	i. conduct a CEMS performance evaluation.	(1) applicable requirements in § 63.8 and applicable performance specification (PS–7, PS–8, PS–9, or PS–15) in appendix B to part 60 of this chapter.	(a) you must conduct the CEMS performance evaluation during the period of the initial compliance demonstration according to the applicable requirements in § 63.8 and the applicable performance specification (PS–7, PS–8, PS–9, or PS–15) of 40 CFR part 60, appendix B; (b) you must install, operate, and maintain the CEMS according to the applicable performance specification (PS–7, PS–8, PS–9, or PS–15) of 40 CFR part 60, appendix B; and (c) you must collect CEMS emissions data at the inlet and outlet of each control device during the period of the initial compliance demonstration and determine the CEMS operating limit during the period of the initial compliance demonstration.

Subpart ZZZZ—[Amended]

■ 53. Revise Table 4 to subpart ZZZZ to read as follows:

As stated in §§ 63.6610, 63.6611, 63.6620, and 63.6640, you must comply with the following requirements for performance tests for stationary RICE:

TABLE 4 TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
1. 2SLB, 4SLB, and CI stationary RICE.	a. reduce CO emissions.	i. Select the sampling port location and the number/location of traverse points at the inlet and outlet of the control device; and	.....	(a) For CO and O_2 measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, appendix A–1, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, appendix A–4.
		ii. Measure the O_2 at the inlet and outlet of the control device; and	(1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A–2, or ASTM Method D6522–00 (Reapproved 2005)[a c] (heated probe not necessary).	(b) Measurements to determine O_2 must be made at the same time as the measurements for CO concentration.
		iii. Measure the CO at the inlet and the outlet of the control device.	(1) ASTM D6522–00 (Reapproved 2005)[a b c] (heated probe not necessary) or Method 10 of 40 CFR part 60, appendix A–4.	(c) The CO concentration must be at 15 percent O_2, dry basis.
2. 4SRB stationary RICE.	a. reduce formaldehyde emissions.	i. Select the sampling port location and the number/location of traverse points at the inlet and outlet of the control device; and	.....	(a) For formaldehyde, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, appendix A.
		ii. Measure O_2 at the inlet and outlet of the control device; and	(1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A–2, or ASTM Method D6522–00 (Reapproved 2005)[a] (heated probe not necessary).	(a) Measurements to determine O_2 concentration must be made at the same time as the measurements for formaldehyde or THC concentration.
		iii. Measure moisture content at the inlet and outlet of the control device; and	(1) Method 4 of 40 CFR part 60, appendix A–3, or Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03[a].	(a) Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde or THC concentration.

TABLE 4 TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
		iv. If demonstrating compliance with the formaldehyde percent reduction requirement, measure formalde-hyde at the inlet and the outlet of the control device.	(1) Method 320 or 323 of 40 CFR part 63, appendix A; or ASTM D6348–03 [a], provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	(a) Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
		v. If demonstrating compliance with the THC percent reduction requirement, measure THC at the inlet and the outlet of the control device.	(1) Method 25A, reported as propane, of 40 CFR part 60, appendix A–7.	(a) THC concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
3. Stationary RICE	a. limit the concentration of formaldehyde or CO in the stationary RICE exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary RICE; and	.....	(a) For formaldehyde, CO, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, appendix A. If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary RICE exhaust at the sampling port location; and	(1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A–2, or ASTM Method D6522–00 (Reapproved 2005) [a] (heated probe not necessary).	(a) Measurements to determine O_2 concentration must be made at the same time and location as the measurements for formaldehyde or CO concentration.
		iii. Measure moisture content of the station-ary RICE exhaust at the sampling port location; and	(1) Method 4 of 40 CFR part 60, appendix A–3, or Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 [a].	(a) Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde or CO concentration.
		iv. Measure formaldehyde at the exhaust of the station-ary RICE; or	(1) Method 320 or 323 of 40 CFR part 63, appendix A; or ASTM D6348–03 [a], provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	(a) Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

TABLE 4 TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
		v. measure CO at the exhaust of the stationary RICE.	(1) Method 10 of 40 CFR part 60, appendix A–4, ASTM Method D6522–00 (2005) [a c], Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–03 [a].	(a) CO concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

[a] You may also use Methods 3A and 10 as options to ASTM–D6522–00 (2005). You may obtain a copy of ASTM–D6522–00 (2005) from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

[b] You may obtain a copy of ASTM–D6348–03 from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

■ 54. Amend appendix A to part 63 to read as follows:

■ a. By revising Method 306, sections 2.2.1 and 6.1.4, and the Note to section 8.0.

■ b. By revising Method 306A, section 8.2.

■ c. By revising Method 308, section 10.1.3.

■ d. By amending Method 315 as follows:

■ i. By revising section 6.1.1.

■ ii. By redesignating section 8.11 as section 8.1.

■ iii. By revising newly designated section 8.1.

■ iv. By revising section 10.5.

■ e. By revising Method 316, section 10.5.

■ f. By revising Method 321, the definition for the term ''Df'' in section 9.3.1.

Appendix A to Part 63—Test Methods Pollutant Measurement Methods From Various Waste Media

* * * * *

Method 306—Determination of Chromium Emissions From Decorative and Hard Chromium Electroplating and Chromium Anodizing Operations—Isokinetic Method

* * * * *

2.2.1 Total chromium samples with high chromium concentrations (≥35 μg/L) may be analyzed using inductively coupled plasma emission spectrometry (ICP) at 267.72 nm. Note: The ICP analysis is applicable for this method only when the solution analyzed has a Cr concentration greater than or equal to 35 μg/L or five times the method detection limit as determined according to appendix B in 40 CFR part 136. Similarly, inductively coupled plasma-mass spectroscopy (ICP–MS) may be used for total chromium analysis provided the procedures for ICP–MS analysis described in Method 6020 or 6020A (EPA Office of Solid Waste, publication SW–846) are followed.

* * * * *

6.1.4 Operating and maintenance procedures for the sampling train are described in APTD–0576 of Method 5. Users should read the APTD–0576 document and adopt the outlined procedures. Alternative mercury-free thermometers may be used if the thermometers are, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

8.0 Sample Collection, Preservation, Holding Times, Storage, and Transport

Note: Prior to sample collection, consideration should be given to the type of analysis (Cr^{+6} or total Cr) that will be performed. Which analysis option(s) will be performed will determine which sample recovery and storage procedures will be required to process the sample.

* * * * *

Method 306A—Determination of Chromium Emissions From Decorative and Hard Chromium Electroplating and Chromium Anodizing Operations

* * * * *

8.2 Sample Recovery. After the train has been transferred to the sample recovery area, disconnect the tubing that connects the jar/impingers. The tester shall select either the total Cr or Cr^{+6} sample recovery option. Samples to be analyzed for both total Cr and Cr^{+6} shall be recovered using the Cr^{+6} sample option (Section 8.2.2). Note: Collect a reagent blank sample for each of the total Cr or the Cr^{+6} analytical options. If both analyses (Cr and Cr^{+6}) are to be conducted on the samples, collect separate reagent blanks for each analysis. Also, since particulate matter is not usually present at chromium electroplating and/or chromium anodizing operations, it is not necessary to filter the Cr^{+6} samples unless there is observed sediment in the collected solutions. If it is necessary to filter the Cr^{+6} solutions, please refer to Method 0061, Determination of Hexavalent Chromium Emissions from Stationary Sources, Section 7.4, Sample Preparation in SW–846 (see Reference 1).

* * * * *

Method 308—Procedure for Determination of Methanol Emission From Stationary Sources

* * * * *

10.1.3 Temperature Sensors. Calibrate against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

Method 315—Determination of Particulate and Methylene Chloride Extractable Matter (MCEM) From Selected Sources at Primary Aluminum Production Facilities

* * * * *

6.1.1 Sampling train. A schematic of the sampling train used in this method is shown in Figure 5–1, Method 5, 40 CFR part 60, appendix A–3. Complete construction details are given in APTD–0581 (Reference 2 in section 17.0 of this method); commercial models of this train are also available. For changes from APTD–0581 and for allowable modifications of the train shown in Figure 5–1, Method 5, 40 CFR part 60, appendix A–3, see the following subsections. Note: The operating and maintenance procedures for the sampling train are described in APTD–0576 (Reference 3 in section 17.0 of this method). Since correct usage is important in obtaining valid results, all users should read APTD–0576 and adopt the operating and maintenance procedures outlined in it, unless otherwise specified herein. Alternative mercury-free thermometers may be used if the thermometers are, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application. The use of grease for sealing sampling train components is not recommended because many greases are soluble in methylene chloride. The sampling train consists of the following components:

* * * * *

8.1 Pretest preparation. It is suggested that sampling equipment be maintained according to the procedures described in APTD–0576. Alternative mercury-free thermometers may be used if the thermometers are at a minimum equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

10.5 Temperature sensors. Use the procedure in Section 10.3 of Method 2, 40 CFR part 60, appendix A–1 to calibrate in-stack temperature sensors. Dial thermometers, such as are used for the DGM and condenser outlet, shall be calibrated against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

Method 316—Sampling and Analysis for Formaldehyde Emissions From Stationary Sources in the Mineral Wool and Wool Fiberglass Industries

* * * * *

10.5 Temperature gauges: Use the procedure in Section 4.3 of EPA Method 2 to calibrate in-stack temperature gauges. Dial thermometers, such as are used for the dry gas meter and condenser outlet, shall be calibrated against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

Test Method 321—Measurement of Gaseous Hydrogen Chloride Emissions at Portland Cement Kilns by Fourier Transform Infrared (FTIR) Spectroscopy

* * * * *

9.3.1 * * *

DF = Dilution Factor (Total flow/Spike flow). Total flow = spike flow plus effluent flow.

* * * * *

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S.J. Res. 28 / P.L. 113–84
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S.J. Res. 29 / P.L. 113–85
Providing for the appointment of Risa Lavizzo-Mourey as a citizen regent of the Board of Regents of the Smithsonian Institution. (Feb. 21, 2014; 128 Stat. 1014)

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